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CURRENT TOPICS

The New Year Honours

THE first New Year's Honours List of the Queen's reign includes the conferment of a barony on The Right Hon. Sir (ROBERT WILLIAM) HUGH O'NEILL, Bt., who was called by the Inner Temple in 1909. Mr. L. M. D. DE SILVA, Puisne Justice of the Supreme Court of Ceylon, is to be sworn a member of the Privy Council, and Sir ERNEST HENRY POOLEY, K.C.V.O., Chairman of the Arts Council, who was called by Lincoln's Inn in 1901, becomes a baronet. We also note with pleasure the conferment of the honour of knighthood on His Honour HUGH LOVEDAY BEAZLEY, Common Serjeant of the City of London since 1942, Mr. JAMES CROYSDALE, solicitor, of Leeds, Mr. J. J. CRAIK HENDERSON, solicitor, of Glasgow, Mr. C. W. RADCLIFFE, C.B.E., D.L., Clerk of the Peace and Clerk of the Middlesex County Council, and Mr. HAROLD SUTCLIFFE, M.P., who was called by the Inner Temple in 1925. A full list of the honours of legal interest will appear in next week's issue.

Sir Paul Lawrence

THE Right Hon. Sir PAUL OGDEN LAWRENCE, a former Lord Justice of Appeal and judge of the Chancery Division, died on Boxing Day, aged 91. The second son of the late P. H. Lawrence, a barrister of Lincoln's Inn, he was educated at Malvern College and abroad. He was called by Lincoln's Inn in 1882 and practised for some years in the Lancaster Palatine Court. He took silk in 1896 and had a large practice in the Chancery Courts, the House of Lords and the Judicial Committee of the Privy Council. He was appointed a judge in 1918 and to the Court of Appeal in 1926, retiring in 1934. He was chairman of the General Council of the Bar from 1913 to 1918, chairman of the Incorporated Council of Law Reporting from 1917 to 1919, and Treasurer of Lincoln's Inn in 1925.

Sir Granville Ram

THE late Sir GRANVILLE RAM, K.C.B., Q.C., who died at the age of 67 on 23rd December, 1952, was a public servant whose work as Parliamentary Counsel to the Treasury from 1924 to 1947 will live in history. Draftsman of such notable statutes as the Trade Disputes Act, 1926, the Emergency Powers (Defence) Act, 1939, the Education Act, 1944, and the Criminal Justice Act, 1948, he was possessed of a clarity and subtlety of mind which was ideally suited to the work of translating the intentions of legislators, of whatever political colour, into unambiguous English. " Retiring " in 1947 after ten years as First Parliamentary Counsel to the Treasury, he was appointed as chairman of the committee to revise the statute book. He was the son of the late A. J. Ram, K.C., and after Eton and Exeter College, Oxford, he was called to the Bar by the Inner Temple in 1910 and went into the chambers of Mr. Henry McCardie, later to be Mr. Justice McCardie. Having served with the Hertfordshire Yeomanry throughout the war of 1914–18, he entered the Ministry of Labour as assistant solicitor and later became solicitor to the Ministry. After 1947 he sat as chairman of the Hertfordshire Quarter Sessions and of its licensing committee and as

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a Church Commissioner. He was a member of the Association of Governing Bodies of both Boys' and Girls' Public Schools and was a Governor of the Berkhamsted Public Schools and the Frances Holland Church of England High School for Girls.

The Matrimonial Causes (Judgment Summons) Rules, 1952

THE Matrimonial Causes (Judgment Summons) Rules, 1952 (S.I. 1952 No. 2209 (L.21)), made on 18th December, 1952, and coming into operation on 12th January, 1953, provide for the enforcement by way of judgment summons in the High Court of orders for the payment of money made in matrimonial causes. By r. 2 a judgment creditor under any judgment or order for the payment of money given or made in a matrimonial cause may apply *ex parte* in Form 1 in the appendix to the rules for the issue of a judgment summons to a registrar of the Divorce Registry or of a district registry of the High Court possessing divorce jurisdiction, whichever is most convenient in relation to the place where the debtor resides or carries on business. Rule 3 provides for the transfer of the file of proceedings where the application is made in a registry other than that in which the cause is proceeding. Rule 4 deals with the service of the judgment summons, which is to be in Form 2 in the appendix, and r. 5 with evidence and witnesses. Rule 6 clarifies the circumstances in which a commitment order may be made, r. 7 deals with notice of the commitment order, and r. 8 provides for its issue. Application for leave to issue where execution has been suspended is to be supported by an affidavit in Form 3 in the appendix.

Amendment of County Court Rules

THE County Court (Amendment) Rules, 1952 (S.I. 1952 No. 2198 (L.20)), made on 17th December, 1952, and coming into operation on 1st January, 1953, provide for a number of amendments to the County Court Rules, 1936, as amended. The rules affect, *inter alia*, notices of non-service and doubtful service of a summons; the provisions for the striking out of default actions after twelve months from the date of service of the summons; notice that a judgment summons has not been served in due time; the transfer of proceedings for a judgment summons; the provision that the fee payable on an application for extension of an order of commitment may be allowed as costs of the order; and payments into court by a garnishee. Substituted forms are specified for Form 136 (Judgment for Plaintiff in Action of Forfeiture for Non-Payment of Rent), Form 161 (Warrant of Execution against the Goods of the Plaintiff), Form 184 (Order of Commitment on a Judgment Summons), Form 200 (Warrant for Possession of Land) and Form 288 (Notice of Hearing: Admiralty Jurisdiction); and new forms contained in the rules are Form 141A (Endorsement on Certificate of Judgment Issued for Purpose of a Judgment Summons), Form 158A (Præcipe for Warrant for Possession of Land), Form 162A (Notice of Levy on Warrant of Delivery and of Execution for Judgment Debt and Costs), Form 162B (Notice of Levy on Warrant of Delivery, where, if goods are not returned, levy to be made for their value), Form 162C (Notice of Levy on Warrant of Execution for Enforcement of a Fine) and Form 203A (Warrant of Delivery and of Execution for Costs, on a judgment under s. 12 (4) (*b*) of the Hire-Purchase Act, 1938).

The New Magistrates' Courts Rules

THE Magistrates' Courts Rules, 1952 (S.I. 1952 No. 2190/L. 18), and the Magistrates' Courts (Forms) Rules, 1952 (S.I. 1952 No. 2191/L. 19), both made by the LORD CHANCELLOR on 17th December, 1952, after consultation with the Rule Committee appointed under s. 15 of the Justices of the Peace Act, 1949, have now been published. Both sets of rules come into operation with the Magistrates' Courts Act, 1952, on 1st June, 1953, and it will now be possible, as it was not before, to review the consolidated law as to procedure in these courts. This we hope to do fully in an early issue of THE SOLICITORS' JOURNAL.

Accommodation Agencies

THE Accommodation Agencies Bill, read for the first time on 16th December, 1952, seeks to prohibit the taking of certain commissions in dealings with persons seeking houses or flats to let and the unauthorised advertisement for letting of houses and flats. Sir GEOFFREY HUTCHINSON, moving the first reading, said that in recent years there had sprung into existence a number of letting agencies or, as they called themselves, accommodation agencies, which invited persons searching for houses or flats to register their requirements with them and, in return, promised to supply lists of vacant accommodation. Before anything was done, a registration fee had to be paid. It was from these fees that the agencies obtained their remuneration, and there were agencies which had been taking £600 a week in registration fees. Often the people who had registered found the accommodation to which they were directed was no longer available, and that the landlord was completely unaware even of the existence of the agent. It was clear that the addresses were obtained from the advertisement columns of a paper or from a shop window. Fraud and dishonesty were almost inevitable where an agency was conducted on these lines. The Bill would make it unlawful to accept money merely for registering names and requirements, to accept money for supplying a person with addresses or particulars of houses to let, and to advertise a house to let without the authority of the landlord or his agent.

The Merchandise Marks Bill

THE new Merchandise Marks Bill, which has been presented to Parliament, seeks to extend the application of the existing Acts in regard to misleading trade descriptions, by enlarging the type of description to which they apply, and by increasing the penalties for offences. The meaning of the term "trade description" in the Merchandise Act, 1887, is to include indications of "the quality, fitness for purpose, strength, accuracy, performance or behaviour of any goods." The meaning of the term has hitherto been confined to indications of such matters as weight, origin, mode of manufacture, materials, and patents. The meaning of "false trade description" is also extended to include descriptions which are misleading in a material respect about the goods which they purport to describe. A false trade description is also defined as one which is calculated to convey a meaning it does not express, for instance, by using a true statement to imply something false or by qualifying prominent words by words likely to be passed over. Such a description might not be a trade description at all, but it would be so treated for the purposes of the Bill. Trade marks within the meaning of the Trades Mark Act, 1938, or parts of such trade marks, will not come under the provisions relating to false trade descriptions provided that they fulfil certain conditions, nor will the provisions extend the existing obligation upon the Customs to seize imported goods bearing a false trade description. It is also proposed to apply to certification trade marks the provisions concerning the use of United Kingdom trade marks on imported goods which now apply to ordinary trade marks.

A Conveyancer's Diary

1952

By far the most important event of the past year for the conveyancer and property lawyer was the passage into law of the Intestates' Estates Act, 1952; and by far the most important of the changes which that Act has made in the law is the increase in the amount of the provision which is now made out of an intestate's estate for the intestate's surviving spouse. In practice it is the widow, rather than the widower, who will obtain the greatest benefit under the new law, and indeed it was the position of the widow which formed the principal subject of investigation for the committee upon whose recommendations the Bill which has now become law was based, and thus supplied the main motive for the new system of distribution upon intestacy now in operation.

The fall in the value of money since 1925, when this part of the law of property was last revised, had made some change in the amount of the statutory legacy (as it is commonly called) of £1,000 provided by the Administration of Estates Act, 1925, for the surviving spouse absolutely essential, but the increase of this legacy to at least £5,000 (in the common case where there is issue of the marriage) constitutes a real increase in value, even when the fall in the purchasing power of money since 1939 has been taken into account. There is little doubt that this increase will be warmly welcomed by laymen, not only for its own sake, but also because it will reduce the number of cases where funds of small amounts have to be held in trust during the lifetime of a surviving spouse, and the improved machinery contained in this Act for the composition of a widow's or widower's life interest under an intestacy by means of a capital payment provides further recognition of the inconvenience which these small limited interests have caused to beneficiaries and trustees in the past.

The only adverse comment which I have seen on the increase of the statutory legacy to £5,000 in the cases where this rate of increase will be the appropriate one is that it may work injustice to the issue of the intestate by a former marriage. Second marriages are frequent enough to make it impossible to dismiss this objection on the ground that the injustice which this part of the new scheme of distribution may involve will be quantitatively small, but the real answer to this point lies in the extension of the jurisdiction to award maintenance to dependants under the Inheritance (Family Provision) Act, 1938, to total intestacies, so that it will always be open to the issue of an earlier marriage to apply for what will, in effect, be a discretionary variation of the statutory scheme of distribution in their favour and at the expense, in many cases, of the widow or widower. The experience which the judges of the Chancery Division have acquired of the Act of 1938, which seemed so novel when it first came into force, will enable the court to do justice in a manner which no rigid code of law, however detailed its provisions, could do—a matter which will cause no surprise to anyone familiar with those Continental systems of law in which problems of this kind have for long been entrusted to special family courts, or indeed with the ancient jurisdiction of the Court of Chancery in this country in matters concerning the property and welfare of persons held to be incompetent, for one reason or another, to manage their own affairs. The expense of an application to the court, which in any case is not great, is not a large price to pay for the elasticity which this part of the Act gives to the general scheme of distribution.

No other legislation of comparable importance can be credited to the past year, nor, with one possible exception, have there been any reported cases during the year which can be mentioned in the same breath. The exception I make here is a tentative one, because though two of the cases in question were reported at first instance during 1952 in full, the original judgments in these cases have been reversed on appeal and little except the bare fact of reversal has so far been reported. The cases I have in mind are *Re Downshire Settled Estates* and *Re Blackwell's Settlement Trusts* (reported under the titles *Re D* and *Re B* at [1952] 2 T.L.R. 483 and 489 respectively), which were both decisions of Roxburgh, J., and another case, *Re Chapman's Settlement Trusts*, a decision of Harman, J., which, so far as I know, has not yet been reported. All these cases were instances of applications to the court under its jurisdiction to sanction compromises on behalf of beneficiaries who are either not *sui juris* or are not in existence at the date of the compromise, the immediate purpose of the compromise in each case being (as Roxburgh, J., pointed out) to rearrange the beneficial interests under the trusts, and the ultimate purpose being to avoid taxation. In the two cases which came before him, Roxburgh, J., after examining the line of authorities upon which these applications were based (and on which similar applications had been successfully made on a number of occasions in the years since the war), held that he had no jurisdiction to do what he was asked to do; and Harman, J., followed these decisions, which were, of course, binding on him, in the case which came before him. Now the Court of Appeal has reversed the decisions of Roxburgh, J., in *Re Downshire Settled Estates* and *Re Blackwell's Settlement Trusts*, holding that both these cases fell within the category of a compromise which, upon the authorities, the court could sanction, but has upheld the decision of Harman, J., in the third case, *Re Chapman's Settlement Trusts*, because in the view of that court the case did not fall within this category (see *The Times* newspaper of the 18th December, 1952).

We shall, doubtless, soon know the reasons both for the distinction which has thus been made in cases which, in the view of Harman, J., at any rate, seemed indistinguishable from each other, and also for the applicability of an old jurisdiction to circumstances which are somewhat different from any case so far reported on this subject. Meanwhile, however, these cases may be looked upon as symptomatic of what appears to me to be a crisis in the history of that very English institution, the trust.

A correspondent writing to *The Times* just before Christmas, with reference to the proposal (inspired by a recommendation of a similar kind in the Nathan Committee's recent report on the law of charitable trusts) which had appeared in the editorial columns of that newspaper that the range of trustee investments should be generally extended to include ordinary shares in public companies, after questioning the wisdom of such an extension, suggested that the proposal raised a more fundamental question. This was "Whether trusts, which are almost entirely a flower of the hothouse of Victorian prosperity, can flourish in the colder climate and soil of the Welfare State." My own feeling is that the answer to this question, if not a flat negative, is at least this, that if trusts are to continue on any considerable scale, their whole structure will have to be changed. There are considerable advantages to be obtained in regard to taxation from settling property by means of a trust, but only if the trust instrument is drawn with this object, and none other, in view. Many of the ordinary limitations of a family trust, as these are to be

found in the books of precedents, are totally unfitted for incorporation in a modern trust deed designed to avoid or mitigate the incidence of taxation on the trust property; the interpolation of a protective trust, for example, which seemed so natural to our forefathers, in whose eyes the principal danger to the trust property lay in the extravagance of a beneficiary, can be utterly disastrous in an age where estate duty has reached confiscatory levels. The preparation of a trust instrument with a view to avoiding taxation is thus a task for the specialist, and those with great wealth who can afford to make over the enjoyment and control of a part of their possessions before death can be provided with the means which will enable them, in favourable circumstances, to pass on their wealth to their families more or less intact. But this is a very different thing from the kind of trust with which the practitioner normally comes in contact in his practice, the fund of moderate size held on the trusts of a marriage settlement or the residuary trusts of a will, the limitations of which are practically standard; a life interest for the principal beneficiary, with remainder to his or her issue either subject to or in default of the exercise of a power of appointment, and perhaps a provision making the life interest a protected life interest in certain events. For estate duty purposes it is the life interest which is the disadvantage in this common form of limitation, since duty is normally paid on the capital value of the trust property on the death of the life-tenant unless his or her life interest can somehow or other be terminated prematurely, and even then the liability to duty is not immediately determined. Sometimes such termination is possible without an application to the court, sometimes not; and the decision in *Re Chapman's Settlement Trusts* serves as a reminder that an application may not always be successful.

The burden of estate duty being so much more difficult to mitigate where property is in trust, and the yield of trust property being in general lower, sometimes considerably lower, than that on property which is under absolute control, who can deny the force of this suggestion that the day of the trust, so far as all but the very wealthy are concerned, is passing, if it is not already past? Certainly not those who have had any participation in an application to the court designed (whatever camouflage was put on the operation at the time) to take property out of the control of the trustees to whom it had been confided by the settlor and to transfer it into the hands of beneficiaries who, according to the settlor's scheme, were destined to have the enjoyment of property without any of the responsibilities or temptations attached to its management. That applications of this kind, and schemes with similar objects carried out where that is possible out of court, are desired not for the purpose of dissipating property, but of conserving it, seems to me to indicate that the trust, in the form in which it has been most familiar in the last century and a half, is now out of date, at least as a usual method of disposing of property either *inter vivos* or by will.

It is with these considerations in mind that I put forward the suggestion that the decisions in the cases mentioned above are the most noteworthy of the past year. To the practitioner already expert in these matters they will bring some enlightenment, for the bounds of the jurisdiction which has been invoked, somewhat experimentally, up till now for the purpose of breaking trust limitations, or at any rate bending them to a more convenient pattern, have never been very clearly defined. To those more remote from the practice of the Chancery Division in chambers they will, I hope, do far more in spreading the knowledge, or at least the suspicion, that in the matter of the disposal of property, as in other things, the ways of our forefathers are not always to be followed in the changed—some will say, the sadly changed—circumstances of to-day.

"A B C"

Landlord and Tenant Notebook

CONTROL: THE "SINGLE STRUCTURE" TEST

In the early days of rent control, there was considerable controversy over the question of the applicability of the legislation to "combined premises," i.e., buildings used partly for residential and partly for business purposes. There were judges who favoured a "dominant purpose" test; but this view was disposed of by the decision in *Epsom Grand Stand Association* v. *Clarke* (1919), 35 T.L.R. 525, in which a licensed house was held to be a protected dwelling-house, and soon after that the Increase of Rent, etc., Restrictions Act, 1920, expressly enacted (s. 12 (2) (ii)) that its application should not be excluded by reason only that part of the premises was used as a shop or for business, trade or professional purposes. More recently, *Vickery* v. *Martin* [1944] K.B. 679 (C.A.) and *Kitchen's Trustee* v. *Madders* [1949] 2 All E.R. 1079 (C.A.) showed that the "part" need not be the same part all the time, and that it did not matter how much or how little was the business or residential user.

More recently still, and rather unexpectedly, *Thompstone* v. *Simpson* [1952] 1 T.L.R. 447 decided that a certain garage with living accommodation above it was not a controlled dwelling-house. The decision in question was discussed at some length in the "Notebook" on 22nd March, 1952 (96 Sol. J. 176); Hallett, J., who tried the case at Newcastle Winter Assizes, was much influenced by a Scottish authority, *Pender* v. *Reid* [1948] S.C. 381, in which it was held that premises consisting of a coal "ree" or yard, with a two-storeyed dwelling in the corner occupied by the tenant, were outside the Acts because the dwelling was merely an "adjunct to" the business premises. This despite the more elaborate provision made for combined premises in the Rent, etc., Restrictions Act, 1939, s. 3 (3), to which I will presently refer.

The "adjunct" test was speedily exploited by the plaintiff in *Feyereisel* v. *Parry* [1952] 1 T.L.R. 700, in which the premises successfully claimed were "a camping site on which were a number of objects, bodies of omnibuses and huts, and also a bungalow available for, and in fact used by, the tenant for personal occupation." Clearly the facts of that case resembled those of *Pender* v. *Reid* more closely than did the facts of *Thompstone* v. *Simpson*, and it is not surprising to find that in the most recent decision of all, *Whiteley* v. *Wilson* [1952] 2 T.L.R. 802 (C.A.), while *Feyereisel* v. *Parry* is "applied," *Thompstone* v. *Simpson* is "criticised."

The facts of *Whiteley* v. *Wilson* were that a building consisting of a shop with dwelling accommodation above it had been let to the defendants in 1950. The shop and the living accommodation each had its own means of access to the street, but there was "some means of inter-communication" between them: I imagine this means a staircase. In September, 1951, the defendants assigned the lease to the

plaintiff in consideration of a payment of £150, which he now sued for as an unauthorised premium. The defendants contended that the rent restriction legislation did not apply to the premises at all, they having two characteristics, and the business characteristic predominating—as was found to be the case in *Thompstone* v. *Simpson*, in which, likewise, access could be gained to the living accommodation either direct or through the garage. Reliance was also placed on s. 3 (3) of the 1939 Act; in setting out its provisions, it will be convenient to divide it into three phrases, as Evershed, M.R.'s judgment emphasised such division: "(i) the application of the principal Acts . . . to any dwelling-house shall not be excluded by reason only that part of the premises is used as a shop or office or for business, trade or professional purposes; (ii) and for the purposes of the Rent and Mortgage Interest Restrictions Acts, 1920 to 1938, as amended by virtue of this section, any land or premises let together with a dwelling-house shall, unless the land or premises so let consists or consist of agricultural land exceeding two acres in extent, be treated as part of the dwelling-house; (iii) but, save as aforesaid, the principal Acts shall not, by virtue of this section, apply to any dwelling-house let together with land other than the site of the dwelling-house."

The second and third phrases had, it was held in the county court and in the Court of Appeal, just nothing at all to do with the facts of *Whiteley* v. *Wilson*. It was correct to invoke them in such a case as *Feyereisel* v. *Parry*, the bungalow on a camping site case. But where one is dealing with *a single structure*, no other land or premises being comprised in the letting, all that has to be done is see whether the first phrase applies or not; if the common sense of the matter is that the building is a shop, it is outside the Act; but, if it is a dwelling-house which is partly or even substantially used as a shop, and not a shop which is used in part for residential purposes, it is controlled.

The judgments clearly treat *Vickery* v. *Martin*, *supra*, with respect, and there are passages which show that the terms of the tenancy agreement may be decisive (or what they contemplate: see *Wolfe* v. *Hogan* [1949] *2* K.B. 194 (C.A.). But the re-introduction of a "dominant purpose" test, favoured in *Thompstone* v. *Simpson*, was considered unsound: "if the learned judge had found as a fact that the first and second floors should be regarded as one entity, distinct from the shop premises on the ground floor . . . then I think he might have proceeded to find that the latter entity was outside the protection of the Act, and he might have made an order relating *to it alone*" was Evershed, M.R.'s criticism, with which Romer, L.J., associated himself.

Of course, border-line cases may still occur because one has, even when there is but a single structure, to consider (when the terms of the tenancy afford no guidance) whether the building should *in a broad sense*, as Romer, L.J., said, *be regarded* as a dwelling-house used partly as a shop or a shop used partly for residential purposes. And whether premises consist of a single structure might itself conceivably be arguable, as might be seen from a perusal of the facts (the issue actually concerned a right to support) of *Colebeck* v. *Girdlers' Co.* (1876), 1 Q.B.D. 234: of the premises described, there was far more upstairs than downstairs.

R. B.

HERE AND THERE

THE PICKWICK FILM

It's vacation time. It's Christmas time. Let's talk about the Pickwick film. I went eagerly to see it, but, as somebody recently said in another context, it certainly underwhelmed me. That was a pity, for it started very well indeed with the mellow cheerfulness of old inns and the rattle and spark of the stage coaches. The ball at Rochester, the duel with Dr. Slammer of the 97th Regiment, the progress to Dingley Dell were all extremely funny in the boisterous mood of the original. But from Dingley Dell onwards, at first almost imperceptibly, then more and more obviously, the film seemed to lose grip or focus or gusto—whichever expression fits best. Whatever can have happened to it? Dickens is, of course, hard to film well, but not impossible. "David Copperfield" was blissfully satisfying, even with Tommy Traddles cut right out, though, oddly enough, when the same company tried to follow on with "A Tale of Two Cities," which ought to have been easier to bring off, the result was rather a mess. "Great Expectations" fulfilled all promise, while "Oliver Twist," if it was not exactly Dickens, turned out to be very good cinema, thanks to clever camera work. In filming any of these vast, sprawling masterpieces the first difficulty is that you can't put in everything; you've got to select and omit. But to that there's the very satisfactory corollary that, faced with such a rich mountain of material, there is neither need nor excuse for interpolation whether in story or setting; it's all there. A little discreet joinery work here, a little unobtrusive soldering there, but, apart from that, you've got all you want. In short, though "The Pickwick Papers," the whole Pickwick Papers, are obviously far out of reach, it's a plain practical possibility to achieve nothing but the Pickwick Papers, and I think part of the trouble with this film was that the clever people who made it thought up a lot of clever little interpolations of their own, which, no doubt, theoretically might have been better than sticking to what their author told them, but in practice were not.

DICKENS KNEW HIS LAW

Now, it happens that the legal aspects of the story suffered extensively from this well-intentioned tinkering. Dickens, of course, hated the law but he knew it in and out and back and front and all ways up. So where the law was concerned it was risky of the producer to let go of his hand for an instant. No doubt he thought it was a shrewd, dramatic stroke to substitute Mr. Justice Stareleigh for Mr. Peter Magnus in the scene from chapter 24, where the revelation of poor Mr. Pickwick's encounter with the middle-aged lady in the double-bedded room causes him such acute social embarrassment, but after such a personal encounter the learned judge would certainly never had tried the case of *Bardell* v. *Pickwick*. (Incidentally he figures in the film indifferently as "Mr. Stareleigh" and "Mr. Justice Stareleigh," the producer not apparently being aware of the quaint little English paradox that Sir Malcolm Lien, for example, in society, is Mr. Justice Lien judicially and, just to make it more difficult, is addressed in court as "My lord.") As for Stareleigh's appearance and personality, Dickens was perfectly explicit—"a most particularly short man and so fat that he seemed all face and waistcoat; he rolled in upon two little turned legs . . . All you could see of him was two queer little eyes, one broad pink face." What special point of improvement was achieved by turning him into a tall, portly, bewhiskered man and accompanying all his appearances by a clashing rendition of the first few bars of the Mikado's song? As for the trial scene, no one who knows anything about English courts can miss the sure sense of technical accuracy in Dickens's caricature, the heightening and underlining of a *chose vue*. You couldn't say that of the film trial scene—not by a long chalk. Quite apart from such details as the transformation of the witness-box ("a kind of pulpit with a brass rail") into a spiked enclosure like an old-time dock, or the casual reference to the "prosecution" in a civil case, or the whitish coats the counsel seemed to be wearing (unless it was just

an unlucky accident of lighting), it was an instance of a "made to measure" exchanged for a "reach me down." The original Serjeant Buzfuz was a bully and an accomplished forensic humbug but he was operating within the limits of a well-defined convention which was not just a matter of putting a wig on his head. For one thing, he'd never have left his place in counsels' seats to wander menacingly about the well of the court like an American attorney in a gangster play. The film Buzfuz, indeed, as played, might have been any stock court-room bully anywhere from Chicago to Budapest, or any time from the Bloody Assizes to the latest totalitarian state trials.

THE FLEET TRANSFORMED

It's the same with the Fleet Prison scenes. The place was quite horrible enough when Dickens traced its profile, though it had been a good deal nastier a century before. Some critics complained of the way the film switched here from the farce of the earlier sequences to harrowing social document, but in fact the social document was a fabrication. In vast mediæval-looking vaults almost everything that had ever happened in any prison anywhere, Newgate or the Fleet or York Castle, seemed to be going on simultaneously, all in one great blur of confusion, with a scaffold and gallows thrown in for good measure. Heaven knows what it was doing in a debtors' prison. Was anything really gained by jettisoning the rich, authentic contemporary details of Dickens? In his Fleet there was nothing of a mediævalistic background, for the old Fleet had been burnt in the Gordon Riots of 1780. It was a place of squalid little rooms where the debtors lived singly or communally according to their means. Given the particularity of the chapters describing them, one can imagine the sharp, clear detail with which a French or an Italian producer would have translated the written word into the visual actuality of individuals and groups. Yes, there you have it. What the film fell down on all the time was inattention to detail. Another example: Messrs. Dodson and Fogg were made to look like twins in a conventional representation of low cunning and villainy. Was that really more effective than adopting the neatly contrasting portraits sketched in chapter 20?

NOT SO GENTLE

In current entertainment the law seems to be suffering more than is strictly necessary from inattention to detail. In a recent semi-dramatic broadcast on The Baccarat Case in 1891, the plaintiff, Sir William Gordon-Cumming, figured as a pleasantly modest gentleman beaten down by the ruthless cross-examination of Sir Charles Russell, fair perhaps "according to the rules" but humanly not the best method of arriving at the truth. Well, that's as may be, but Russell knew the sort of man he was dealing with and the broadcaster apparently did not. There was nothing pleasantly modest about the real Sir William, "possibly the handsomest man in London and certainly the rudest," as a contemporary newspaper called him. Just a bit of journalism? His daughter's autobiography drew him as a robust extrovert who "never . . . lost the touch of swagger in his walk, the hint of scorn for lesser mortals, the suggestion that he was irresistible." Even a slight infusion of that spirit would have made the broadcast a lot more interesting and dramatic, since it renders even more mysterious the signed confession of cheating at cards which he afterwards repudiated. Certainly the man who, when he dined out, deliberately lingered in the hall while his wife was announced, so as to make a solitary entrance, the focus of attention, can hardly have been a shy violet in the witness-box. It just shows how a little background knowledge can illuminate a bare shorthand note.

RICHARD ROE.

NOTES OF CASES

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JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

PRACTICE NOTE

DEATH OF APPELLANT DURING HEARING: ABATEMENT OF APPEAL

Lord Oaksey, Lord Reid and Sir Lionel Leach

1st December, 1952

During the course of the hearing of this appeal (No. 51 of 1951) from a judgment of the Supreme Court of Ceylon, which arose out of a suit upon a bond and a promissory note, it was announced that the appellant had died. Counsel for the appellant said that the result of the appellant's death was, as he apprehended, that the appeal abated. The proper course, if the appeal was to go on, was for a petition to be filed for revivor under r. 51 of the Judicial Committee Rules, 1925. For that to be done a certificate had to be obtained from the court appealed from saying who were the proper parties to be substituted for the appellant. There was a case referred to in Bentwich's Privy Council Practice (*Ledgard* v. *Bull* (1886), L.R. 13 Ind. App. 134) in which other evidence than a certificate was accepted as to who were the proper parties. But he (counsel) was not in a position to offer any other evidence to the Board because he did not know, and had no instructions, whether a will was left or, if there was a will, who were the executors. In those circumstances it was not possible for him or for his instructing solicitors to offer any indication to the Board in the way of evidence as to who would be the proper parties. Therefore he apprehended that the Board would feel that the only course that could be taken if the appeal were to go on was for a petition for revivor to be filed in the ordinary way, and it would be necessary for the petition to be accompanied by a certificate from the Supreme Court of Ceylon as to who the proper parties were. Speaking as *amicus curiae*, he would submit that the Board should proceed no further that day. The appeal having abated, in due course those who became the appellant's personal representatives would decide whether or not to file a petition to the Board asking that the appeal might be revived.

Their lordships of the Board adopted the suggestion of counsel, and expressed their sympathy with the relatives of the late appellant.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.] [1 W.L.R. 1

CEYLON: MOHAMMEDAN LAW: MARRIAGE: VALIDITY

Abdúl Cader *v.* Razik and Others

Viscount Simon, Lord Morton of Henryton, Lord Cohen and Sir Lionel Leach. 2nd December, 1952

This was an appeal (No. 37 of 1951) from a judgment of the Supreme Court of Ceylon, dated 28th September, 1950, which had affirmed a judgment and order of the District Court of Colombo, dated 2nd August, 1948, on a petition brought by the present appellant, Abdul Cader, with regard to the guardianship of the person and the custodianship of the property of his daughter Zubeida, who, when just over fifteen years of age, was married on 11th December, 1947, to one Rasheed bin Hassan. The parties were Mohammedans, and the only question in this appeal was whether or not the marriage was valid.

Lord COHEN, giving the judgment of the Board, said that Zubeida was married as a member of the Hanafi sect, having appointed her uncle as her wali or agent for the purpose of the marriage. In the Ceylon courts the appellant disputed the validity of the marriage on the ground, *inter alia*, that, as a member of the Hanafi sect, the marriage was invalid either (*a*) because under Moslem law, as applied in Ceylon, a Hanafi girl of fifteen could not be married without the consent of her father as wali; or (*b*) because the rules that would otherwise apply to her under Mohammedan law were overriden by the provisions of the Age of Majority Ordinance, No. 7 of 1865 (cap. 53 of the Legislative Enactments of Ceylon, 1938), which he alleged made twenty-one years the legal age of majority for

all persons for all purposes. Both courts below found against the appellant. Their lordships had only two points to determine: (1) whether the Mohammedan law, as incorporated into the law of Ceylon, included the provision, which it was admitted existed in general Mohammedan law, that a Hanafi girl who had attained the age of bulugh (puberty) could marry without the assistance of a wali, or appoint whom she chose to act as a wali; (2) whether the Majority Ordinance overrode the provisions of the Mohammedan law as to marriage and thus made it impossible for Zubeida, while under twenty-one, to enter into a valid marriage contract, at any rate without the consent of her father. On the second point their lordships agreed with the Supreme Court that for the purpose of marriage a Muslim in Ceylon attained "majority" on reaching the age of puberty, and would add that none of the cases cited suggested a contrary conclusion. On the first point, counsel for the appellant admitted that, under the Mohammedan law as laid down in the text-books, a Hanafi girl who had attained the age of puberty did not require a wali and might appoint whom she chose to act as wali, but he contended that that provision had not been incorporated into the law of Ceylon. He founded himself on the Mohammedan Code of 1806, which purported to record the usages of the caste then in force, and in particular on article 64, which provided that "a person wishing to marry, application must be made to the bride's father and mother for their consent." But the Code of 1806 had been repealed, and the place of those sections which dealt with marriage and divorce had been taken by the Marriage and Divorce (Muslim) Ordinance, No. 27 of 1929, as amended by Ordinance No. 9 of 1934 (cap. 99 of the 1938 Legislative Enactments of Ceylon). Section 50 of cap. 99 provided: "The repeal of ss. 64 to 102 (first paragraph) inclusive of the Mohammedan Code of 1806, which is effected by this Ordinance, shall not affect the Muslim law of marriage and divorce, and the rights of Muslims thereunder." The Supreme Court of Ceylon summed up their conclusions on this point in language which their lordships of the Board would respectfully adopt: "The Marriage and Divorce (Muslim) Ordinance, No. 27 of 1929, as amended by Ordinance No. 9 of 1934, was proclaimed on 1st January, 1937. By that time the Legislature had openly recognised the right of Muslims in certain matters to deal and be dealt with according to the law governing the sect to which they belonged. It was, therefore, in our opinion, unnecessary to say so in so many words in s. 50 of cap. 99. The words 'Muslim law' in that section cannot mean anything more or less than the Muslim law governing the sect to which the particular person belongs. We would, therefore, hold that in a matter of marriage or divorce a Muslim is governed by the law of the sect to which he or she belongs." Their lordships agreed with the Supreme Court that a valid contract of marriage was entered into between Zubeida and Rasheed bin Hassan on 11th December, 1947, and would humbly advise Her Majesty to dismiss the appeal. The appellant must pay the respondent's costs.

APPEARANCES: *D. N. Pritt*, Q.C., and *Stephen Chapman* (*Darley, Cumberland & Co.*); *Christopher Shawcross*, Q.C., *R. K. Handoo* and *S. Amerasinghe* (*Burchells*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.] [2 W.L.R. 1

LOAN: SECURITY: PRIORITIES

F. & M. Khoury *v.* Azar

Lord Normand, Lord Morton of Henryton, Lord Cohen
9th December, 1952

These were three consolidated appeals from three judgments of the West African Court of Appeal.

By an agreement of 16th November, 1946, between one Moukarzel and the respondent, P. S. Azar, to secure repayment to the latter of £4,000 lent by him to Moukarzel, to be repaid by instalments, it was provided that repayment was secured by the grant to Azar of certain rights over a number of used motor vehicles and trailers belonging to Moukarzel, including the right, on default in payment, to require Moukarzel to transfer the vehicles to Azar. Moukarzel further covenanted not to transfer or in any way encumber the vehicles. By a deed of 22nd November, 1946, Moukarzel, in breach of his covenant with Azar, assigned to the appellants, F. & M. Khoury, the vehicles in question, together with others, by way of security for the repayment of £16,140. No permit for the assignment of the motor vehicles effected by that deed was ever obtained or applied for under the Defence (Control of Transfer of Used Motor Vehicles) Order, 1943, as amended, of the Gold Coast, which provided, in s. 2, that "In this Order, unless the context otherwise requires—'Sell' includes any transfer of the property in a used motor vehicle," and, by s. 3, that "No person shall sell or purchase a used motor vehicle unless a permit has first been obtained under this Order." Moukarzel having given Azar a cheque in payment of an instalment under his agreement which was dishonoured, Azar obtained a judgment against Moukarzel in December, 1946, for the whole sum due to him. In the course of those proceedings, at the instance of Azar, the motor vehicles subject to the agreement and certain others were attached by Azar. On 4th January, 1947, the appellants issued an interpleader summons under Ord. 44, r. 25 (1), of the Rules of the Supreme Court of the Gold Coast calling on Azar to show cause why the property seized should not be released from attachment. On 28th March, 1947, Azar brought an action against the appellants and Moukarzel claiming declarations that the security constituted by his agreement with Moukarzel over the motor vehicles and trailers had priority in law and equity over any security constituted by the deed made between the appellants and Moukarzel, and that he was entitled to be treated as first mortgagee.

LORD COHEN, giving the judgment, said that the mortgage effected by the appellants' deed was not a "sale" within the meaning of the Order of 1943, as amended, for the context in this case required otherwise than that "sell" should include this transfer, and accordingly the deed was in no way affected by the Order. At the time when the vehicles were attached at the instance of Azar the appellants, who had no prior notice of Azar's agreement, had a valid legal mortgage thereon, which had priority over the charge created by Azar's agreement, since the appellants had obtained the legal estate by their deed. As against Azar the appellants were entitled to be treated as first mortgagees of the vehicles. The vehicles mortgaged to the appellants by their deed were not in the possession of Moukarzel "on account of or in trust for" the appellants, but they could only be sold subject to the rights of the appellants as mortgagees under their deed.

APPEARANCES: *C. P. Harvey*, Q.C., and *Rodger Winn* (*Farrar, Porter & Co.*); *Raymond Jennings*, Q.C., and *Raymond Walton* (*A. L. Bryden & Williams*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.] [1 W.L.R. 21

HOUSE OF LORDS

NEGLIGENCE: WINDOW CLEANER: SAFE SYSTEM OF WORK

General Cleaning Co., Ltd. *v.* Christmas

Earl Jowitt, Lord Oaksey, Lord Reid and Lord Tucker
10th December, 1952

Appeal from the Court of Appeal ([1952] 1 K.B. 141).

The plaintiff was an experienced window cleaner in the employ of the defendant company. While engaged in cleaning from the outside a window at the Caledonian Club, he was standing on a sill 6¼ inches wide. Holding on to the bottom cross-piece of the top and outer sash with his right hand, he pushed it up to the top of the window frame, the lower sash being raised a few inches from the bottom of the frame. This sash was apt to move at the slightest touch, though no complaint had been made about it, and similar defects were not uncommon. The sash closed so that the top of it came down on to the plaintiff's finger; he lost his balance, fell, and was injured. Though safety belts were made available by the defendant company, he did not use one because there were no hooks to which it could have been attached. He brought an action against the club and the defendant company, alleging negligence and failure to provide a safe system of work, and obtained judgment against both defendants before Jones, J. On appeal the judgment against the club was reversed, but the judgment against the employers upheld. The employers appealed.

EARL JOWITT said that Denning, L.J., with whom Hodson, L.J., agreed, had said that the employers had failed to take proper steps to protect the plaintiff: they might have used ladders or required the householder to provide hooks for the attachment of a safety belt. Lloyd-Jacob, J., had said that it was incumbent on the employers to ensure that the involuntary closing of the lower sash was impossible, and that their failure in this respect constituted a want of reasonable care. There was no evidence that the use of a ladder was less dangerous than standing on a sill, and there was no suggestion that a safety belt could be used

except with hooks. The trial judge had held that the employers were not negligent in these respects, and there was no reason to differ from him. But if the employers were not liable to ensure the safety of their workers by ladders or belts, they were under an obligation to make the system adopted as safe as could be. They had done nothing in the way of provision of wedges or blocks to prevent the sashes closing. The trial judge and Lloyd-Jacob, J., had thought that they were negligent in this respect, and rightly. The maxim *volenti non fit injuria* did not avail the appellants, and the appeal should be dismissed.

The other noble and learned lords agreed. Appeal dismissed.

APPEARANCES: *H. I. Nelson*, Q.C., and *S. Chapman* (*L. Bingham and Co.*); *E. Ryder Richardson*, Q.C., and *R. Fortune* (*Wedlake, Letts & Birds*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.] [2 W.L.R. 6

COURT OF APPEAL

NEGLIGENCE: DANGEROUS OBJECT: NECESSITY FOR CONSUMMATE CARE

Beckett *v.* Newell's Installation Co., Ltd., and Another

Singleton and Morris, L.JJ.
1st December, 1952

Appeal from Stable, J.

In the fitting out of a ship work was being carried out on two refrigeration chambers, one of which was inside the other, by two companies, an insulation company, the first defendants and the plaintiff's employers, and a refrigeration company, the second defendants. On a Friday the second defendants were carrying out brazing work by calor gas from a container; and at the end of the day the foreman disconnected the pipe from the container to the burner, and left the container with other tackle in a corner of the outer chamber. On Saturday, Sunday and Tuesday the second defendants did no work, but the plaintiff and his foreman were engaged in plastering, no work being done on Monday. On Sunday the first defendants' foreman moved the cylinder into the inner chamber, as it was in the way. On Tuesday the plaintiff went into the inner chamber, and struck a match, as the electric light bulbs had been removed; an explosion took place, in which he was injured. The plaintiff brought an action against both companies, alleging negligence. Stable, J., dismissed the action. The plaintiff appealed.

SINGLETON, L.J., said that the cylinder was provided with a tap and a regulator, and if these were properly turned off, gas could not escape. It was difficult to see how the first defendants' foreman could have turned on the gas while moving the cylinder, and the finding below absolving him from negligence must be upheld. The case against the second defendants was that they had brought on to the premises a dangerous substance which might cause damage if allowed to escape, and that they had not exercised a sufficient degree of care to prevent escape, e.g., by fitting a closing cap over the discharge orifice. There must have been an escape of gas, or the explosion would not have occurred. In his (his lordship's) view, the degree of care required from the second defendants, who had introduced the dangerous article, was to be measured by the danger involved in bringing it on to the ship. The law expected of a man a great deal more care in carrying a pound of dynamite than a pound of butter, as Professor Winfield had written in his "Law of Torts." The second defendants' foreman had left a dangerous object about without any warning as to the danger of moving it, or any instructions as to how it should be moved; it was even possible that he had not closed the tap and regulator properly. Under the circumstances, he should have taken more care, and the plaintiff ought to have judgment against the refrigeration company.

MORRIS, L.J., agreeing, said that either there must have been an escape of gas from Friday onwards, or the cylinder was left in such a condition that the gas could be turned on by someone who moved it without negligence. In either case the refrigeration company was liable. Appeal allowed against the second defendants.

APPEARANCES: *G. Veale*, Q.C., and *J. H. Robson* (*Isadore Goldman & Son*, for *Crute & Sons*, Sunderland); *H. Hylton-Foster*, Q.C., and *G. S. Waller* (*Denis Hayes*); *R. Marven Everett*, Q.C., and *N. Harper* (*Barlow, Lyde & Gilbert*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.] [1 W.L.R. 8

HUSBAND AND WIFE: DAMAGES: DEATH OF CHILD: ORDER VARIED

Collins *v.* Collins

Singleton, Birkett and Morris, L.JJ. 1st December, 1952

Appeal from an order of Pearce, J.

The parties were married in 1927. The marriage was dissolved in October, 1935, on the ground of the wife's adultery, and the co-respondent was ordered to pay damages of £2,500. Of this sum £500 was to be paid out to the husband, and the balance was to be invested for the benefit of the child of the marriage, the income to be paid to the husband during the child's minority. The son was killed in an accident on 12th October, 1951. He was then aged nineteen, and died intestate leaving a residuary estate of £1,684 5s. 10d. By the Administration of Estates Act, 1925, this fell to be divided equally between his parents. Pearce, J., on application by the husband, varied the order so that the balance of the damages settled on the child should be paid to the father on condition that the father paid the son's debts.

SINGLETON, L.J., said that the power of the court to direct in what manner damages should be paid was now regulated by s. 30 of the Matrimonial Causes Act, 1950. For the wife it had been said that the money belonged to the son and that as he died intestate his estate should be divided between the parents. The wife would, as it were, get her share by reason of his death, and not of her own adultery. For the husband it had been submitted that the money was not the son's at all, and that an order under s. 30 was not a final order but one which could be varied, and that it was not an apportionment in any sense of the word. The court had consulted the Accountant-General, who had expressed the view that orders directing investment of damages allocated to infants should provide for payment out on or after the infant attaining twenty-one years. He (his lordship) agreed with that view. He referred to the practice in the Queen's Bench Division when damages were awarded to a child and said that there should be no distinction between the practice of the two Divisions. There should be a regular practice in these matters, and provision should be made in the order that the money should go to the petitioner if the child died before reaching the age of twenty-one. He (his lordship) had reached the conclusion that in the circumstances of this case the decision of Pearce, J., was right, and that in the events which had happened it was proper for the petitioner to apply to the court to direct what should be done with the damages. It would scarcely appear to be in accordance with justice that the wife should receive any part of the damages awarded to the petitioner. Although that would not be a bar to her receiving the money if there had been an intestacy in regard to the fund, that was not the case, and the appeal should be dismissed.

BIRKETT and MORRIS, L.JJ., concurred. Appeal dismissed.

APPEARANCES: *J. R. Bickford-Smith* (*William A. Crump and Son*); *G. H. Crispin* (*Denton, Hall & Burgin*, for *Herbert, Simpson, Son & Bennett*, Leicester).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law.] [2 W.L.R. 20

CHANCERY DIVISION

COMPANY: UNDERPAYMENT OF PREFERENCE SHAREHOLDERS: DISTRIBUTION OF ARREARS

Godfrey Phillips, Ltd. *v.* The Investment Trust Corporation, Ltd.

Wynn Parry, J. 10th December, 1952

Special case.

The plaintiff company had in issue a series of "B" cumulative preference shares, the holders of which had the right to receive their dividends partly free of income tax. Doubts having arisen as to whether the company was paying the dividends at the correct rate, an action was brought to determine the matter (see *Friends' Provident and Century Life Office* v. *Investment Trust Corporation, Ltd.* [1951] W.N. 476; 95 SOL. J. 545, in which it was decided that the dividends had been underpaid since 1939). Various questions then arose, to decide which the company instituted the present proceedings, representatives of the various classes of shareholders being made defendants. The questions for decision were: (1) whether the "B" shareholders were entitled to receive arrears as from 1939, when the underpayments first occurred, or from 1948, when the main action was brought; (2) whether the arrears were to be paid (*a*) as an aggregate sum to the "B" shareholders on the register at the time of payment of

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the arrears, or (*b*) to the persons registered as shareholders on the material dates when each of the half-yearly underpayments of dividend was made; (3) whether the rate of income tax which the company was to deduct when paying the arrears was that in force at the date of such payment, or that in force at the time when each of the half-yearly underpayments was made.

WYNN PARRY, J., said that, on the first question, no debt was created until a dividend was declared, so that the half-yearly "shortfalls" did not give rise to debts. The "B" shareholders, however, still had their rights, and could insist as against the company and the junior classes of shareholders that the arrears should be paid off before any further distribution of the company's profits was made, unless they were barred by laches or waiver or estopped from asserting their rights in respect of any period before 31st October, 1948. It had been argued for the junior classes of shareholders that there had been laches and acquiescence on the part of the "B" shareholders before 1948, so as to debar them from asserting claims prior to that date, and *Matthews* v. *Great Northern Railway Co.* (1859), 28 L.J. Ch. 375, had been relied on, but that authority did not touch the present case, in which laches and acquiescence played no part. When a dividend was underpaid, the right of a "B" shareholder was to sue for a declaration that dividends should not be paid to junior classes of shareholders until the deficiency was made up, and for an injunction on the same footing. Where an injunction was sought in aid of a legal right, it was not barred by lapse of time: there was also nothing in the case to indicate that the "B" shareholders had waived their rights. It followed that they were entitled to arrears as from 1939. As to the second question, the distribution of the arrears must take the form of a dividend, and that dividend would be solely in respect of the year in which profits were declared for division; such a dividend could only be paid to persons registered at the time of declaration; it followed that the persons in the register at the date of declaration of the dividend representing the arrears were those entitled to receive payment. As to the last question, it followed also that the rate of income tax applicable was the standard rate at the date of the declaration.

Order accordingly.

APPEARANCES: *R. J. T. Gibson; R. Instone; R. W. Goff; Victor Coen* (*Gouldens*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.] [1 W.L.R. 41

ADMINISTRATION: CORPORATE ADMINISTRATOR AND TRUSTEE: REMUNERATION

***In re* Masters, deceased**

Danckwerts, J. 18th December, 1952

Adjourned summons.

M died intestate in 1949, leaving a widow and three children, then infants. Administration was granted in November, 1949, to the widow and Coutts & Company, the present applicants. No order for the applicants' remuneration was made at the time of the grant. The summons raised the question whether the court had jurisdiction to authorise remuneration subsequently. The Trustee Act, 1925, provides, by s. 42: "Where the court appoints a corporation . . . to be a trustee . . . the court may authorise the corporation to charge such remuneration for its services as trustee as the court may think fit." By s. 63 (17) ". . . the expressions 'trust' and 'trustee' extend . . . to the duties of a personal representative, and 'trustee' where the context admits, includes a personal representative . . ." By s. 69 (1): "This Act . . . applies to trusts including . . . executorships and administratorships . . ."

DANCKWERTS, J., said that, as the estate was substantial and required a good deal of work in its administration, it was reasonable to appoint the applicants as administrators and trustees. It was plain from the provisions of the Act that the duties of an administrator included those of a trustee, so that s. 42 applied; that view had been adopted by Langton, J., in the Probate Division in *In the Estate of Young* [1934] W.N. 106. Further, it was also plain that the court had an inherent jurisdiction to authorise remuneration, whether the trustee was appointed by the court or not: that followed from *In re Freeman's Settlement Trusts* (1887), 37 Ch. D. 148; *Marshall* v. *Holloway* (1820), 2 Swanst. 432, and *In re Macadam* [1946] Ch. 73.

Application granted.

APPEARANCES: *D. H. McMullen* (*Ravenscroft, Woodward and Co.*); *Michael Browne* (*Gibson & Weldon*, for *Bellamy-Knights and Griffin*, Shoreham); *M. O'C. Stranders* (*Farrer & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.] [1 W.L.R. 81

QUEEN'S BENCH DIVISION

CONTRACT: WHETHER FOR SALE OF GOODS OR FOR WORK AND LABOUR

Marcel (Furriers), Ltd. *v.* Tapper

Hilbery, J. 3rd December, 1952

The defendant, on behalf of his wife, ordered an imitation mink coat from the plaintiffs. The defendant's wife selected skins of the colour she desired and specified the style of coat, directing that it should be made with the skins running horizontally. Her instructions were carried out but the coat was rejected by her husband and herself. The plaintiffs sued the defendant for £950 for work done and materials supplied in the making of the coat. By his defence, the defendant pleaded that the contract was one for the sale of goods of the value of £10 or over and was accordingly unenforceable pursuant to s. 4 of the Sale of Goods Act, 1893, by reason of the fact that there was no note or memorandum in writing of the contract signed by the party to be charged or his agent.

HILBERY, J., said that the question to be determined was whether or not the substance of the contract was that it was a contract for skill and labour to be exercised for the production of the article in question, or a contract for the production of something to be sold to the customer. In the first case, s. 4 of the Sale of Goods Act would not apply and in the second, it would. There was no doubt that a high degree of skill and craftsmanship went into the making-up of a fur jacket such as was to be made for the defendant in the present case, but it was really a case of making an article for sale to the defendant on his special order, and he (Hilbery, J.) could not discover anything to distinguish the case from that of an ordinary article which it was part of someone's business to supply and which that person had to make to special measurements for the customer. It required skill, labour and material, of course, to make the coat, but the purpose of the transaction was the supply of the complete article for the price. In the circumstances, although s. 4 of the Sale of Goods Act was not a plea to which a court gave effect with any feeling that it was doing justice in the ordinary sense of the word, none the less, in upholding the plea, it was doing what was justice according to law and he was bound to give effect to it. There must, therefore, be judgment for the defendant.

APPEARANCES: *R. F. Levy*, Q.C., and *Leonard Caplan* (*Edward Davis, Nelson & Co.*); *Morris Finer* (*Arnold A. Finer*).

[Reported by PHILIP B. DURNFORD, Esq., Barrister-at-Law.] [1 W.L.R. 49

NEGLIGENCE: RAILWAY STATION: INVITOR AND INVITEE: SLIPPERY SURFACE: STEPS TAKEN TO RENDER PREMISES REASONABLY SAFE

Blackman *v.* Railway Executive

Hilbery, J. 3rd December, 1952

The plaintiff, when walking across a part of Paddington railway station premises known as the "lawn"—from which passengers were not expressly excluded—on her way to the tube station, slipped and fell on a patch of oil which had dripped from vehicles which normally used that area, and sustained injuries. The foreman on duty had seen the oil when a vehicle had been moved, and he had immediately ordered sawdust, kept available for that purpose, to be put down, and had called to passengers not to go that way, but the plaintiff, who did not hear the foreman, and who was not seen by him, slipped on the oil patch before the sawdust could be put down. The plaintiff brought an action for damages for personal injuries sustained in the fall, alleging negligence against the Railway Executive in that they, their servants or agents, caused or permitted the platform to become dangerous to pedestrians by leaving on it oil or other material of a slippery nature on which she, whilst lawfully walking across the station, did in fact slip. The defendants denied that the plaintiff was walking lawfully at the material time and place, and they denied negligence.

HILBERY, J., said that the question as to whether a passenger on the tube railway could be said to be an invitee or merely a licensee had been examined by Parker, J., in *Bloomstein* v. *Railway Executive* [1952] W.N. 378; following that case the plaintiff must be treated as an invitee of the Railway Executive. There was no particular marking to denote to a passenger that the lawn was a place he must not go upon and in the circumstances, therefore, he treated the plaintiff as an invitee on that part of the station. In *Tomlinson* v. *Railway Executive* (*The*

Times, 4th November, 1952), when there had been a sudden fall of snow on which the plaintiff had slipped, the Court of Appeal said that the defendants must take reasonable care to have the premises reasonably safe for passengers. In *Stowell* v. *Railway Executive* [1949] 2 K.B. 519; 65 T.L.R. 387, a platform used for fish had been left slippery so that the plaintiff had fallen; here there had been no failure to observe within a reasonable time that an oil patch had formed nor was there any failure to take steps in time to render the situation free from danger. The Railway Executive did not guarantee a person coming on their premises against any accident; their duty was to take reasonable steps to keep the premises as free from danger as they could reasonably be kept. The plaintiff had not shown that her accident was due to a failure on the part of the Railway Executive's employees in the particular circumstances to exercise reasonable care. Judgment for the defendants.

APPEARANCES: *P. Merriton* (*Alfred Bieber & Bieber*); *Neil Lawson* (*M. H. B. Gilmour*).

[Reported by Miss J. F. LAMB, Barrister-at-Law.] [1 W.L.R. 2

FACTORY: EXECUTIVES' RESTAURANT WITHIN CURTILAGE OF FACTORY: USER: NOT A FACTORY

Thomas *v.* British Thomson-Houston Co., Ltd.

Havers, J. 8th December, 1952

Action.

A factory contained within its curtilage a canteen called the Vicarage Restaurant, for the exclusive use of administrative and executive staff. One of the three dining-rooms in the restaurant was occasionally used as a conference room where representatives of the shop stewards and the management met; and there was also in the building a games room reserved for the use of apprentices. A general handyman employed by the factory owners fell from a ladder while cleaning the windows of the restaurant. He claimed damages for personal injuries which he alleged were due, *inter alia*, to a breach by his employers of their statutory duty under s. 26 of the Factories Act, 1937. His employers denied that the restaurant was a factory within the meaning of s. 151 of the Act of 1937, subs. (6) of which provides: "Where a place situate within the close, curtilage, or precincts forming a factory is solely used for some purpose other than the processes carried on in the factory, that place shall not be deemed to form part of the factory for the purposes of this Act . . ."

HAVERS, J., applied the tests laid down by MacKinnon, L.J., in *Wood* v. *London County Council* [1941] 2 K.B. 232, and by the Divisional Court in *London Co-operative Society, Ltd.* v. *Southern Essex Assessment Committee* [1942] 1 K.B. 53, to the effect that it was proper to take into account the whole nature of the premises and of the work carried out in them, and that the decisive element was whether the restaurant was necessary for the welfare of the admittedly industrial workers. He said that it was a borderline case, but he had come to the conclusion that the Vicarage Restaurant was not a factory as defined by s. 151 of the Act of 1937, as although it was within the curtilage of a factory it was "used solely for some purpose other than the processes carried on in the factory." The employers were accordingly under no statutory duty towards the plaintiff and the action would be dismissed.

APPEARANCES: *H. S. Ruttle* (*Evill & Coleman*); *Montague Berryman*, Q.C., and *M. J. Anwyl-Davies* (*Stuart H. Lewis*).

[Reported by Miss SHEILA COBON, Barrister-at-Law.] [1 W.L.R. 67

CLAIM BY GAS BOARD AGAINST LOCAL AUTHORITY: DETERMINATION BY MINISTER OF HEALTH

East Midlands Gas Board *v.* Doncaster Corporation

Hallett, J. 12th December, 1952

Action.

The Gas Act, 1948, which made provision for the compulsory acquisition of gas undertakings throughout the country and for the vesting of them in gas boards on 1st May, 1949, provided in s. 37 (1) that where after 10th February, 1948, a local authority had, without the approval of the Minister of Health, debited any amount in the accounts of its gas undertaking and credited such amounts in any other of its accounts, the local authority should be liable to pay that amount to the appropriate gas board; and by s. 37 (2) that any claims by such gas board should be made within twelve months from the vesting date, and if not settled by agreement, should be determined by the Minister of Health. The defendants, a local authority, after 10th February, 1948, debited two amounts shown in the separate account of their gas undertaking and credited those amounts to their general rate fund and their water undertaking, respectively. The plaintiffs, the appropriate area gas board, claimed the two amounts under s. 37 (1) within the statutory period of twelve months; and the claim, not being settled by agreement, was under subs. (2) determined by the Minister in favour of the gas board. The corporation continued in its refusal to pay the amounts claimed, and the gas board began proceedings, claiming the total of the two amounts and interest thereon from the date of the Minister's determination. The corporation contended that any debit or credit entries under the heading of gas undertaking in their accounts were made in constituent parts of one account, namely, the corporation's general rate fund, and that under the provisions of a special Act, the Doncaster Corporation Act, 1926, and s. 185 (1) of the Local Government Act, 1933, all revenues from such undertakings were made part of that fund; that the gas undertaking was kept under a separate heading as required by that special Act, and that accordingly the debit and credit entries referred to in the claim by the gas board did not involve taking any revenue out of the corporation's gas undertaking and crediting it to the other accounts as alleged. It was contended, therefore, that since the subject-matter of the claim had become part of the general rate fund, it was not a subject-matter to which s. 37 (1) of the Gas Act, 1948, applied, and in consequence the determination by the Minister under subs. (2) was not binding on the corporation.

HALLETT, J., said that the law was not in doubt that where the Legislature had thought it proper to lay down that the determination of a certain question should be made by some authority other than the courts, the courts had no jurisdiction to override what Parliament had so laid down, or to determine that which Parliament had said should be determined by some other person or body. He referred to *Crisp* v. *Bunbury* (1832), 8 Bing. 394, approved in *Joseph Crosfield & Sons, Ltd.* v. *Manchester Ship Canal Co.* [1904] 2 Ch. 123; [1905] A.C. 421; 22 T.L.R. 192 (No. 2) and held that, the claim being a claim under s. 37 (1) made within the statutory period, and having been determined by the Minister under subs. (2), the court had no jurisdiction to determine whether it was a valid claim under the section. That was an end of the action; but he expressed the view, after reviewing what had been done by the local authority in relation to its accounts, that where a local authority, acting in accordance with statutory requirements in special and general Acts, had after 10th February, 1948, kept separate accounts for, *inter alia*, a gas undertaking and for general rates and other accounts, and at the material time revenue from the gas undertaking had not been merged in the other accounts, s. 37 (1) was clearly applicable to debits of amounts in the gas account and credits of those amounts to other accounts.

Judgment for the plaintiffs. Stay of execution for six weeks.

APPEARANCES: *Sir Frank Soskice*, Q.C., and *J. P. Ashworth* (*Sherwood & Co.*, for *A. Gwynne Davies*, Leicester); *A. Capewell*, Q.C., *F. N. Keen* and *W. Sugden* (*Sharpe, Pritchard & Co.*, for the *Town Clerk*, Doncaster).

[Reported by Miss M. M. HILL, Barrister-at-Law.] [1 W.L.R. 54

PROBATE, DIVORCE AND ADMIRALTY DIVISION

ADMIRALTY: JURISDICTION: FUEL OIL SUPPLIED AT FOREIGN PORT OF REGISTRY

Secony Bunker Oil Co., Ltd. *v.* Owners of the Steamship *D'Vora*: The *D'Vora*

Willmer, J. 1st December, 1952

The plaintiffs moved for judgment in default of appearance in respect of the sum of £580 13s. 1d. for fuel oil supplied by them to the *D'Vora* at Algiers, and for a further sum of money due in respect of fuel oil supplied to her at Haifa, where she was registered. The ship was under the arrest of the court at the time of the institution of the suit. By the Supreme Court of Judicature (Consolidation) Act, 1925, s. 22 (1): "The High Court shall, in relation to admiralty matters, have the following jurisdiction (in this Act referred to as 'admiralty jurisdiction') . . . (*a*) jurisdiction to hear and determine any of the following questions or claims: . . . (vii) any claim for necessaries supplied to a foreign ship, whether within the body of a county or on the high seas, and, unless it is shown to the court that at the time of the institution of the proceedings any owner or part owner of the ship was domiciled in England, any claim for any necessaries supplied . . . elsewhere than in the port to which the ship belongs; . . . (x) any claim for building, equipping or repairing . . . if at the

the arrears, or (*b*) to the persons registered as shareholders on the material dates when each of the half-yearly underpayments of dividend was made; (3) whether the rate of income tax which the company was to deduct when paying the arrears was that in force at the date of such payment, or that in force at the time when each of the half-yearly underpayments was made.

WYNN PARRY, J., said that, on the first question, no debt was created until a dividend was declared, so that the half-yearly "shortfalls" did not give rise to debts. The "B" shareholders, however, still had their rights, and could insist as against the company and the junior classes of shareholders that the arrears should be paid off before any further distribution of the company's profits was made, unless they were barred by laches or waiver or estopped from asserting their rights in respect of any period before 31st October, 1948. It had been argued for the junior classes of shareholders that there had been laches and acquiescence on the part of the "B" shareholders before 1948, so as to debar them from asserting claims prior to that date, and *Matthews* v. *Great Northern Railway Co.* (1859), 28 L.J. Ch. 375, had been relied on, but that authority did not touch the present case, in which laches and acquiescence played no part. When a dividend was underpaid, the right of a "B" shareholder was to sue for a declaration that dividends should not be paid to junior classes of shareholders until the deficiency was made up, and for an injunction on the same footing. Where an injunction was sought in aid of a legal right, it was not barred by lapse of time: there was also nothing in the case to indicate that the "B" shareholders had waived their rights. It followed that they were entitled to arrears as from 1939. As to the second question, the distribution of the arrears must take the form of a dividend, and that dividend would be solely in respect of the year in which profits were declared for division; such a dividend could only be paid to persons registered at the time of declaration; it followed that the persons in the register at the date of declaration of the dividend representing the arrears were those entitled to receive payment. As to the last question, it followed also that the rate of income tax applicable was the standard rate at the date of the declaration.

Order accordingly.

APPEARANCES: *R. J. T. Gibson; R. Instone; R. W. Goff; Victor Coen* (*Gouldens*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.] [1 W.L.R. 41

ADMINISTRATION: CORPORATE ADMINISTRATOR AND TRUSTEE: REMUNERATION

***In re* Masters, deceased**

Danckwerts, J. 18th December, 1952

Adjourned summons.

M died intestate in 1949, leaving a widow and three children, then infants. Administration was granted in November, 1949, to the widow and Coutts & Company, the present applicants. No order for the applicants' remuneration was made at the time of the grant. The summons raised the question whether the court had jurisdiction to authorise remuneration subsequently. The Trustee Act, 1925, provides, by s. 42: "Where the court appoints a corporation . . . to be a trustee . . . the court may authorise the corporation to charge such remuneration for its services as trustee as the court may think fit." By s. 63 (17) ". . . the expressions 'trust' and 'trustee' extend . . . to the duties of a personal representative, and 'trustee' where the context admits, includes a personal representative . . ." By s. 69 (1): "This Act . . . applies to trusts including . . . executorships and administratorships . . ."

DANCKWERTS, J., said that, as the estate was substantial and required a good deal of work in its administration, it was reasonable to appoint the applicants as administrators and trustees. It was plain from the provisions of the Act that the duties of an administrator included those of a trustee, so that s. 42 applied; that view had been adopted by Langton, J., in the Probate Division in *In the Estate of Young* [1934] W.N. 106. Further, it was also plain that the court had an inherent jurisdiction to authorise remuneration, whether the trustee was appointed by the court or not: that followed from *In re Freeman's Settlement Trusts* (1887), 37 Ch. D. 148; *Marshall* v. *Holloway* (1820), 2 Swanst. 432, and *In re Macadam* [1946] Ch. 73.

Application granted.

APPEARANCES: *D. H. McMullen* (*Ravenscroft, Woodward and Co.*); *Michael Browne* (*Gibson & Weldon*, for *Bellamy-Knights and Griffin*, Shoreham); *M. O'C. Stranders* (*Farrer & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.] [1 W.L.R. 81

QUEEN'S BENCH DIVISION

CONTRACT: WHETHER FOR SALE OF GOODS OR FOR WORK AND LABOUR

Marcel (Furriers), Ltd. *v.* Tapper

Hilbery, J. 3rd December, 1952

The defendant, on behalf of his wife, ordered an imitation mink coat from the plaintiffs. The defendant's wife selected skins of the colour she desired and specified the style of coat, directing that it should be made with the skins running horizontally. Her instructions were carried out but the coat was rejected by her husband and herself. The plaintiffs sued the defendant for £950 for work done and materials supplied in the making of the coat. By his defence, the defendant pleaded that the contract was one for the sale of goods of the value of £10 or over and was accordingly unenforceable pursuant to s. 4 of the Sale of Goods Act, 1893, by reason of the fact that there was no note or memorandum in writing of the contract signed by the party to be charged or his agent.

HILBERY, J., said that the question to be determined was whether or not the substance of the contract was that it was a contract for skill and labour to be exercised for the production of the article in question, or a contract for the production of something to be sold to the customer. In the first case, s. 4 of the Sale of Goods Act would not apply and in the second, it would. There was no doubt that a high degree of skill and craftsmanship went into the making-up of a fur jacket such as was to be made for the defendant in the present case, but it was really a case of making an article for sale to the defendant on his special order, and he (Hilbery, J.) could not discover anything to distinguish the case from that of an ordinary article which it was part of someone's business to supply and which that person had to make to special measurements for the customer. It required skill, labour and material, of course, to make the coat, but the purpose of the transaction was the supply of the complete article for the price. In the circumstances, although s. 4 of the Sale of Goods Act was not a plea to which a court gave effect with any feeling that it was doing justice in the ordinary sense of the word, none the less, in upholding the plea, it was doing what was justice according to law and he was bound to give effect to it. There must, therefore, be judgment for the defendant.

APPEARANCES: *R. F. Levy*, Q.C., and *Leonard Caplan* (*Edward Davis, Nelson & Co.*); *Morris Finer* (*Arnold A. Finer*).

[Reported by PHILIP B. DURNFORD, Esq., Barrister-at-Law.] [1 W.L.R. 49

NEGLIGENCE: RAILWAY STATION: INVITOR AND INVITEE: SLIPPERY SURFACE: STEPS TAKEN TO RENDER PREMISES REASONABLY SAFE

Blackman *v.* Railway Executive

Hilbery, J. 3rd December, 1952

The plaintiff, when walking across a part of Paddington railway station premises known as the "lawn"—from which passengers were not expressly excluded—on her way to the tube station, slipped and fell on a patch of oil which had dripped from vehicles which normally used that area, and sustained injuries. The foreman on duty had seen the oil when a vehicle had been moved, and he had immediately ordered sawdust, kept available for that purpose, to be put down, and had called to passengers not to go that way, but the plaintiff, who did not hear the foreman, and who was not seen by him, slipped on the oil patch before the sawdust could be put down. The plaintiff brought an action for damages for personal injuries sustained in the fall, alleging negligence against the Railway Executive in that they, their servants or agents, caused or permitted the platform to become dangerous to pedestrians by leaving on it oil or other material of a slippery nature on which she, whilst lawfully walking across the station, did in fact slip. The defendants denied that the plaintiff was walking lawfully at the material time and place, and they denied negligence.

HILBERY, J., said that the question as to whether a passenger on the tube railway could be said to be an invitee or merely a licensee had been examined by Parker, J., in *Bloomstein* v. *Railway Executive* [1952] W.N. 378; following that case the plaintiff must be treated as an invitee of the Railway Executive. There was no particular marking to denote to a passenger that the lawn was a place he must not go upon and in the circumstances, therefore, he treated the plaintiff as an invitee on that part of the station. In *Tomlinson* v. *Railway Executive* (*The*

Times, 4th November, 1952), when there had been a sudden fall of snow on which the plaintiff had slipped, the Court of Appeal said that the defendants must take reasonable care to have the premises reasonably safe for passengers. In *Stowell* v. *Railway Executive* [1949] 2 K.B. 519; 65 T.L.R. 387, a platform used for fish had been left slippery so that the plaintiff had fallen; here there had been no failure to observe within a reasonable time that an oil patch had formed nor was there any failure to take steps in time to render the situation free from danger. The Railway Executive did not guarantee a person coming on their premises against any accident; their duty was to take reasonable steps to keep the premises as free from danger as they could reasonably be kept. The plaintiff had not shown that her accident was due to a failure on the part of the Railway Executive's employees in the particular circumstances to exercise reasonable care. Judgment for the defendants.

APPEARANCES: *P. Merriton* (*Alfred Bieber & Bieber*); *Neil Lawson* (*M. H. B. Gilmour*).

[Reported by Miss J. F. LAMB, Barrister-at-Law.] [1 W.L.R. 2

FACTORY: EXECUTIVES' RESTAURANT WITHIN CURTILAGE OF FACTORY: USER: NOT A FACTORY

Thomas *v.* British Thomson-Houston Co., Ltd.

Havers, J. 8th December, 1952

Action.

A factory contained within its curtilage a canteen called the Vicarage Restaurant, for the exclusive use of administrative and executive staff. One of the three dining-rooms in the restaurant was occasionally used as a conference room where representatives of the shop stewards and the management met; and there was also in the building a games room reserved for the use of apprentices. A general handyman employed by the factory owners fell from a ladder while cleaning the windows of the restaurant. He claimed damages for personal injuries which he alleged were due, *inter alia*, to a breach by his employers of their statutory duty under s. 26 of the Factories Act, 1937. His employers denied that the restaurant was a factory within the meaning of s. 151 of the Act of 1937, subs. (6) of which provides: "Where a place situate within the close, curtilage, or precincts forming a factory is solely used for some purpose other than the processes carried on in the factory, that place shall not be deemed to form part of the factory for the purposes of this Act . . ."

HAVERS, J., applied the tests laid down by MacKinnon, L.J., in *Wood* v. *London County Council* [1941] 2 K.B. 232, and by the Divisional Court in *London Co-operative Society, Ltd.* v. *Southern Essex Assessment Committee* [1942] 1 K.B. 53, to the effect that it was proper to take into account the whole nature of the premises and of the work carried out in them, and that the decisive element was whether the restaurant was necessary for the welfare of the admittedly industrial workers. He said that it was a borderline case, but he had come to the conclusion that the Vicarage Restaurant was not a factory as defined by s. 151 of the Act of 1937, as although it was within the curtilage of a factory it was "used solely for some purpose other than the processes carried on in the factory." The employers were accordingly under no statutory duty towards the plaintiff and the action would be dismissed.

APPEARANCES: *H. S. Ruttle* (*Evill & Coleman*); *Montague Berryman*, Q.C., and *M. J. Anwyl-Davies* (*Stuart H. Lewis*).

[Reported by Miss SHEILA COBON, Barrister-at-Law.] [1 W.L.R. 67

CLAIM BY GAS BOARD AGAINST LOCAL AUTHORITY: DETERMINATION BY MINISTER OF HEALTH

East Midlands Gas Board *v.* Doncaster Corporation

Hallett, J. 12th December, 1952

Action.

The Gas Act, 1948, which made provision for the compulsory acquisition of gas undertakings throughout the country and for the vesting of them in gas boards on 1st May, 1949, provided in s. 37 (1) that where after 10th February, 1948, a local authority had, without the approval of the Minister of Health, debited any amount in the accounts of its gas undertaking and credited such amounts in any other of its accounts, the local authority should be liable to pay that amount to the appropriate gas board; and by s. 37 (2) that any claims by such gas board should be made within twelve months from the vesting date, and if not settled by agreement, should be determined by the Minister of Health. The defendants, a local authority, after 10th February, 1948, debited two amounts shown in the separate account of their gas undertaking and credited those amounts to their general rate fund and their water undertaking, respectively. The plaintiffs, the appropriate area gas board, claimed the two amounts under s. 37 (1) within the statutory period of twelve months; and the claim, not being settled by agreement, was under subs. (2) determined by the Minister in favour of the gas board. The corporation continued in its refusal to pay the amounts claimed, and the gas board began proceedings, claiming the total of the two amounts and interest thereon from the date of the Minister's determination. The corporation contended that any debit or credit entries under the heading of gas undertaking in their accounts were made in constituent parts of one account, namely, the corporation's general rate fund, and that under the provisions of a special Act, the Doncaster Corporation Act, 1926, and s. 185 (1) of the Local Government Act, 1933, all revenues from such undertakings were made part of that fund; that the gas undertaking was kept under a separate heading as required by that special Act, and that accordingly the debit and credit entries referred to in the claim by the gas board did not involve taking any revenue out of the corporation's gas undertaking and crediting it to the other accounts as alleged. It was contended, therefore, that since the subject-matter of the claim had become part of the general rate fund, it was not a subject-matter to which s. 37 (1) of the Gas Act, 1948, applied, and in consequence the determination by the Minister under subs. (2) was not binding on the corporation.

HALLETT, J., said that the law was not in doubt that where the Legislature had thought it proper to lay down that the determination of a certain question should be made by some authority other than the courts, the courts had no jurisdiction to override what Parliament had so laid down, or to determine that which Parliament had said should be determined by some other person or body. He referred to *Crisp* v. *Bunbury* (1832), 8 Bing. 394, approved in *Joseph Crosfield & Sons, Ltd.* v. *Manchester Ship Canal Co.* [1904] 2 Ch. 123; [1905] A.C. 421; 22 T.L.R. 192 (No. 2) and held that, the claim being a claim under s. 37 (1) made within the statutory period, and having been determined by the Minister under subs. (2), the court had no jurisdiction to determine whether it was a valid claim under the section. That was an end of the action; but he expressed the view, after reviewing what had been done by the local authority in relation to its accounts, that where a local authority, acting in accordance with statutory requirements in special and general Acts, had after 10th February, 1948, kept separate accounts for, *inter alia*, a gas undertaking and for general rates and other accounts, and at the material time revenue from the gas undertaking had not been merged in the other accounts, s. 37 (1) was clearly applicable to debits of amounts in the gas account and credits of those amounts to other accounts.

Judgment for the plaintiffs. Stay of execution for six weeks.

APPEARANCES: *Sir Frank Soskice*, Q.C., and *J. P. Ashworth* (*Sherwood & Co.*, for *A. Gwynne Davies*, Leicester); *A. Capewell*, Q.C., *F. N. Keen* and *W. Sugden* (*Sharpe, Pritchard & Co.*, for the *Town Clerk*, Doncaster).

[Reported by Miss M. M. HILL, Barrister-at-Law.] [1 W.L.R. 54

PROBATE, DIVORCE AND ADMIRALTY DIVISION

ADMIRALTY: JURISDICTION: FUEL OIL SUPPLIED AT FOREIGN PORT OF REGISTRY

Secony Bunker Oil Co., Ltd. *v.* Owners of the Steamship *D'Vora*: The *D'Vora*

Willmer, J. 1st December, 1952

The plaintiffs moved for judgment in default of appearance in respect of the sum of £580 13s. 1d. for fuel oil supplied by them to the *D'Vora* at Algiers, and for a further sum of money due in respect of fuel oil supplied to her at Haifa, where she was registered. The ship was under the arrest of the court at the time of the institution of the suit. By the Supreme Court of Judicature (Consolidation) Act, 1925, s. 22 (1): "The High Court shall, in relation to admiralty matters, have the following jurisdiction (in this Act referred to as 'admiralty jurisdiction') . . . (*a*) jurisdiction to hear and determine any of the following questions or claims: . . . (vii) any claim for necessaries supplied to a foreign ship, whether within the body of a county or on the high seas, and, unless it is shown to the court that at the time of the institution of the proceedings any owner or part owner of the ship was domiciled in England, any claim for any necessaries supplied . . . elsewhere than in the port to which the ship belongs; . . . (x) any claim for building, equipping or repairing . . . if at the

time of the institution of the proceedings the ship is, or the proceeds thereof are, under the arrest of the court; . . ."

WILLMER, J., said that he was prepared to give judgment for the plaintiffs in respect of the fuel oil supplied at Algiers in view of subs. (1) (*a*) (vii) of the section. But he held that the supply of consumable goods such as fuel oil was not covered by subs. (1) (*a*) (x), for such supply did not come within the meaning of the word "equipping." "Supply" was a word appropriate in connection with consumable stores, such as fuel oil; but "equip" connoted something of a more permanent nature, such as anchors, cables, etc.

APPEARANCE: *S. Knox Cunningham* (*Allen & Overy*).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law.] [1 W.L.R. 34

LEGAL AID: TAXATION OF COSTS: NO ORDER INTER PARTES

Frost *v.* Frost

Willmer, J. 2nd December, 1952

On the dismissal of a wife's petition for judicial separation an application for an order for costs against the respondent was refused. The wife was an assisted person, and the question arose whether in these circumstances the court had power to order a taxation between solicitor and client according to the Third Schedule to the Legal Aid and Advice Act, 1949, and reg. 18 (3) of the Legal Aid (General) Regulations, 1950.

WILLMER, J., after hearing argument, said that *Brown* v. *Brown* [1952] W.N. 204; [1952] 1 T.L.R. 930 did not appear to have been considered in *Metcalf* v. *Wells* [1952] W.N. 516; [1952] 2 T.L.R. 781. That case decided that even where there was no order for costs *inter partes* the court had power to order taxation against the legal aid fund. The present case was one in which a great amount of costs had been expended for a relief which if obtained would have made little difference in the circumstances to the position of the parties. Nevertheless, the petition had not been improperly brought and the solicitors should have the protection of the Act. Taxation between solicitor and client according to the Third Schedule to the Legal Aid and Advice Act, 1949, would be ordered.

APPEARANCES: *Norman Williams* (*J. N. Nabarro & Sons*); *Ian S. Warren* (*Nutt & Oliver*).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law.] [1 W.L.R. 52

HUSBAND AND WIFE: NULLITY: PRESENTATION OF PETITION BY NEXT FRIEND: APPLICATION TO DISMISS PETITION

J. (otherwise B.) (by her next friend) *v.* J.

Collingwood, J. 3rd December, 1952

Summons (adjourned into court for judgment).

A petition for nullity of marriage on the ground that the wife petitioner had not had the capacity to marry, or in the alternative was of unsound mind at the time of the marriage (which took place within the year preceding the presentation of the petition) was presented by the petitioner's niece, as next friend. The respondent husband entered an appearance under protest on the ground that the petitioner was not of unsound mind nor suffering from any incapacity which necessitated, or justified, the proceedings, and he sought to have the petition dismissed. His application was supported by affidavits which included one by the wife herself, who said, *inter alia*, that she did not want the marriage annulled and that she had married to protect herself from the unwelcome visits of her relatives. The affidavits also included ones by medical practitioners and by the wife's solicitor, deposing to the petitioner's mental capacity.

COLLINGWOOD, J., referred to *Ray* v. *Sherwood and Ray* (1836), 1 Curt. 173, 193; *Turner* v. *Meyers* (1808), 1 Hag. Cons. 414; and *Fry* v. *Fry* (1890), 15 P.D. 25, 50, 51, and held upon these authorities that the husband was entitled to have the suit dismissed if it could be shown that there was reasonable ground for supposing that the wife was capable of managing her own affairs. He adjourned the matter, however, to allow the advisers of the next friend to file affidavits in answer to those filed on behalf of the respondent.

APPEARANCES: *Anthony Harmsworth* (*Long & Gardiner*, for *Norman F. Steward*, Wolverhampton); *John Syms* (*Donald, Darlington & Nice*).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law.] [1 W.L.R. 36

COURT OF CRIMINAL APPEAL

CRIMINAL LAW: "RECKLESS MAKING . . . OF FORECASTS" IN PREVENTION OF FRAUD (INVESTMENTS) ACT, 1939, s. 12 (1)

R. *v.* Russell

Lord Goddard, C.J., Hilbery and Hallett, JJ.
17th December, 1952

Appeal from conviction by Donovan, J., and a jury, Central Criminal Court.

Three defendants, company directors, were prosecuted on charges in connection with the issue of shares, contrary to the Prevention of Fraud (Investments) Act, 1939, s. 12 (1). The first two counts alleged dishonest concealment of material facts and the making of statements which each knew to be untrue. Count 3 alleged the inducing of persons to enter into agreements to acquire shares by the "reckless making of a misleading and deceptive forecast." The chief magistrate held that on the charges involving recklessness the prosecution must show circumstances from which a jury could infer that the defendants, in doing what they had done, did not care whether what they said was true or false, and had no honest belief in its truth. He accordingly discharged one of the defendants and committed the others for trial. Before proceeding to trial with a jury, Donovan, J., gave judgment on a motion to quash the indictment (*R.* v. *Bates & Russell* [1952] W.N. 506). He held that count 3 was good, the issue being purely one of the construction of s. 12 (1) of the Act of 1939, and in particular the passage "the reckless making of any statement, promise or forecast, which is misleading, false or deceptive . . ." He referred to passages from the speeches of Lord Bramwell and Lord Herschell in *Derry* v. *Peek* (1889), 14 App. Cas. 337, 345, 359, and said that he was not constrained by what was there said to decide that in s. 12 (1) the word "reckless" connoted only something dishonest. Section 12 (1) dealt with three categories of persons who have induced or attempted to induce other persons to invest money. The first was the person who made a statement which he knew to be misleading, false or deceptive; the second the person who dishonestly concealed material facts; and the third the person who recklessly made a statement or forecast which was misleading, false or deceptive. Categories 1 and 2 obviously referred to persons who were dishonest. But after referring to a person who had knowingly made a false statement, or who had dishonestly concealed material facts, the Legislature, introducing its third category by the disjunctive "or," changed its language altogether. It did not specify a person who knowingly made a misleading, false or deceptive statement, promise or forecast, or dishonestly made it. It simply specified persons who recklessly made these things. It would be quite understandable if Parliament, intending to do something about misleading, false and deceptive forecasts, took the view that, as a practical matter, it ought to go a step further than in the case of false statements and dishonest concealment of facts, and, in addition to striking at the dishonest prophet, do something to ensure that even the honest ones should take due care to see that their forecasts were not misleading, false and deceptive. If, on the other hand, they were reckless, they should be liable to a penalty. There was nothing in this so repugnant to natural justice that he ought to limit the meaning of words which Parliament had used. He held, therefore, that the word "reckless" in s. 12 (1) must bear its full meaning and be construed as covering the case where there was a high degree of negligence without dishonesty. He thus held count 3 of the indictment to be good, and gave judgment for the Crown. The jury found the two defendants guilty on the first two counts alleging dishonest concealment of material facts, but returned no verdict on the count alleging recklessness. On appeal against conviction by one of the defendants, the second ground of appeal in the original notice of appeal was that the judge had misdirected the jury as to the law relating to count 3 of the indictment. Counsel for the appellant stated that as the jury had not in fact returned a verdict on that count, all that could be done was to invite the attention of the court to that count.

LORD GODDARD, C.J., said that that was one of the most important points in the case, but that as it did not arise on appeal, any opinion expressed by the court would be said to be merely *obiter*. It was unfortunate that the magistrate had given judgment on it. In the course of delivering the judgment of the court, Lord Goddard, C.J., said that a certain Colonel Sweeny

had originally been charged with the two convicted defendants, but was dismissed from the case by the chief magistrate on grounds which, if the court could go into them in the present case, they would gladly have done, because it was obvious that Donovan, J., took a different view with regard to the law from that of the chief magistrate in dismissing Colonel Sweeny. As, however, the judge had expressed a view on the motion to quash the indictment, he saw no reason why the court should not say that they agreed with the view of the judge on the Prevention of Fraud (Investments) Act, 1939, s. 12 (1), which distinguished between a fraudulent statement and a reckless statement.

The appeal on the main ground was dismissed.

APPEARANCES: *F. H. Lawton* (*Claude Hornby & Co.*); *Sir Reginald Manningham-Buller*, Q.C., Solicitor-General; *R. C. Vaughan*, Q.C., and *Neville Faulks* (*Solicitors, Board of Trade*).

[Reported by Miss M. M. HILL, Barrister-at-Law.] [1 W.L.R. 77

ADDENDUM

In *Arab Bank, Ltd. v. Barclay's Bank, Ltd.*, reported at 96 SOL. J. 851, the third counsel for the defendants was Mr. Ian Warren.

BOOKS RECEIVED

The Law of Municipal Contracts with Annotated Model Forms. By CHARLES S. RHYNE, of the District of Columbia Bar. 1952. pp. (with Index) 192. Washington, D.C.: National Institute of Municipal Law Officers.

"Current Law" Guide, No. 9: A Guide to the Law of Intestates' Estates and Family Provision. By DONALD CHARLES POTTER, LL.B., of the Middle Temple and Lincoln's Inn, Barrister-at-Law. 1952. pp. ix and (with Index) 74. London: Sweet and Maxwell, Ltd.; Stevens & Sons, Ltd. 8s. 6d. net.

"Current Law" Guide, No. 10: The Defamation Act, 1952. By RICHARD O'SULLIVAN, Q.C., Recorder of Derby. 1952. pp. ix and (with Index) 50. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. 8s. 6d. net.

Whitaker's Almanack for 1953. By JOSEPH WHITAKER, F.S.A. 1952. London: J. Whitaker & Sons, Ltd. Complete Edition: pp. 1,174, cloth boards, 15s.; Shorter Edition: pp. 676, paper bound, 7s. 6d.; and the Library Edition, bound in leather and with coloured maps, 30s.

Intestacy and Family Provision. By J. GILCHRIST SMITH, LL.M., Solicitor (Honours). 1952. pp. xxiv and (with Index) 208. London: The Solicitors' Law Stationery Society, Ltd. 28s. 6d. net.

An Explanation of The Excess Profits Levy. By H. A. R. J. WILSON, F.C.A., F.S.A.A., F.C.I.S. 1952. pp. xii and (with Index) 111. London: H. F. L. (Publishers), Ltd. 8s. 6d. net.

The Grotius Society. Volume 37. Transactions for the year 1951, Problems of Public and Private International Law. 1952. pp. xxiii and (with Index) 186. London: The Grotius Society. Price to non-members, 25s. net.

The Innocence of Edith Thompson. A Study in Old Bailey Justice. By LEWIS BROAD. 1952. pp. 303. London: Hutchinson & Co. (Publishers), Ltd. 12s. 6d. net.

Underhill's Law Relating to Trusts & Trustees. Tenth Edition. Second Cumulative Supplement. By M. M. WELLS, M.A., of Gray's Inn, Barrister-at-Law. 1952. pp. xiv and 18: London: Butterworth & Co. (Publishers), Ltd. 5s. net.

Green's Death Duties. Supplement to Third Edition. By H. W. HEWITT, LL.B. (Lond.), of the Estate Duty Office. 1952. pp. viii and 11. London: Butterworth & Co. (Publishers), Ltd. 5s. net.

Employer's Liability at Common Law. Second Edition. By JOHN MUNKMAN, LL.B., of the Middle Temple and North-Eastern Circuit, Barrister-at-Law. 1952. pp. liv and (with Index) 478. London: Butterworth & Co. (Publishers), Ltd. 30s. net.

Miller's Excess Profits Levy Law and Practice. By WILLIAM MILLER, M.A., LL.B., M.I.P.A., formerly a Senior Inspector of Taxes, H.M. Inland Revenue Department. 1952. pp. xxv and (with Index) 190. London: Eyre & Spottiswoode (Publishers), Ltd. 22s. net.

Current Law Consolidation. I. 1947-1951. General Editor: JOHN BURKE, Barrister-at-Law. Consolidation Editor: CLIFFORD WALSH, LL.M., Solicitor of the Supreme Court. 1952. pp. dclxxvii, paras. 11123 and (Index) pp. 53. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. £9 9s. net.

Chapman's Five Hundred Points in Club Law and Procedure. Twelfth Edition. Edited by FRANK R. CASTLE, General Secretary, Working Man's Club and Institute Union. 1952. pp. (with Index) 184. London: Club and Institute Union, Ltd. 4s. 6d. net.

SURVEY OF THE WEEK

HOUSE OF LORDS

QUESTIONS

CIVIL ACTIONS AT ASSIZES

The LORD CHANCELLOR said that the delay in bringing civil actions to trial in London and at some of the large towns on circuit was undoubtedly serious. The delay was due to the serious increase in crime throughout the country, which was to an ever-increasing extent taking up the time of judges both in London and on assize. At the present assizes in Manchester, only one of three Queen's Bench judges had been able to give any time to the trial of civil actions, and he had not been able to do so regularly. In consequence, it was likely that fewer than thirty civil cases would have been tried by the end of the assizes, leaving about 520 cases awaiting trial, though this number might be further substantially reduced by cases being settled. Many of these 520 cases, about 40 per cent., had been set down for a comparatively short time, and no doubt a number of them were not ready for trial. It was still true, however, that many cases had been set down for some months.

As to the delay on circuit, the Lord Chief Justice did his best by sending out as many judges as he could spare from London, so as to ensure that the delays were evenly balanced. The delays at Liverpool and Manchester were very much the same as in London. The difficulty was perhaps a special one in South Lancashire, owing to the thickly populated area from which cases came to trial in Liverpool and Manchester. It would ease the position at assizes if a court were set up in South Lancashire corresponding to the Central Criminal Court in London, to which many of the serious cases which at present had to be tried at assizes could be sent. A committee had been set up to deal with this matter and had been asked to treat the matter as one of urgency and to report at the earliest possible moment.

He had also decided to recommend the appointment of another High Court judge, which would go some way to ease the position, and further relief would be given by sending commissioners on assize.

EARL JOWITT welcomed the suggestion for a court in South Lancashire similar to the Central Criminal Court. A policy of balancing the delays was very much a second-best method of dealing with the situation. He hoped more judges would be appointed. It was better that they might occasionally have to go and play golf than that lieges should have to suffer the present long delays in getting their cases heard. The trouble of delay had existed since Shakespeare's time, and he hoped that Lord Simonds would be the Lord Chancellor who would finally end it. [17th December.

LEGAL REPRESENTATION BEFORE TRIBUNALS

The LORD CHANCELLOR furnished the House with two tables, of which Table 1 showed the tribunals before which an individual was entitled to appear in person, but was not allowed to be represented by barrister or solicitor. The second table showed those tribunals before which an individual could appear in person

or, with the consent of some other person or body, by solicitor or counsel. The following are the tables :—

TABLE I

TRIBUNALS BEFORE WHICH LEGAL REPRESENTATION IS FORBIDDEN

Tribunal	Statute	Statutory Instrument
1. Medical, Pharmaceutical and Dental Service Committees	National Health Service Service Act, 1946	National Health Service (Service Committees and Tribunal) Regulations, 1948 (S.I. 1948 No. 507), Regulation 5 (1);
	National Health Service (Scotland) Act, 1947	National Health Service (Medical and Pharmaceutical Service Committees and Tribunal) (Scotland) Regulations, 1948 (S.I. 1948 No. 1259 (S. 96)), Regulation 3;
	National Health Service (Scotland) Act, 1947	National Health Service (General Dental Services) (Scotland) Regulations, 1948 (S.I. 1948 No. 1257 (S. 94)), Regulation 25.
2. Ophthalmic Service Committees	National Health Service Act, 1946	National Health Service (Supplementary Ophthalmic Services) Regulations, 1948 (S.I. 1948 No. 1273), Regulation 17 (1).
	National Health Service (Scotland) Act, 1947	National Health Service (Joint Ophthalmic Services Committees) (Scotland) Order, 1948 (S.I. 1948 No. 1452 (S. 120)), Article 3.
3. Price Regulation Committees	Prices of Goods Act, 1939, Section 8, as amended by the Goods and Services (Price Control) Act, 1941, Section 11	Price Regulation Committees Regulations, 1949 (S.I. 1949 No. 809), Regulation 11 (3).
4. District Valuation Boards	Coal Industry Nationalisation Act, 1946	Coal Industry Nationalisation (Valuation of Compensation Units) Regulations, 1947 (S.R. & O. 1947 No. 1345), Regulation 18 (3).
5. National Insurance Local Tribunals	National Insurance Act, 1946	National Insurance (Determination of Claims and Questions) Regulations, 1948 (S.I. 1948 No. 1144), Regulations 8 and 17.
6. National Assistance Appeal Tribunals	National Assistance Act, 1948, Fifth Schedule	National Assistance (Appeal Tribunals) Rules Confirmation Instrument, 1948 (S.I. 1948 No. 1454), Regulation 11.
7. Military Service (Hardship) Committees	National Service Act, 1948, Section 12 and Third Schedule	National Service (Miscellaneous) Regulations, 1948 (S.I. 1948 No. 2683), Regulation 23.
8. Disabled Persons District Advisory Committees	Disabled Persons (Employment) Act, 1944, Section 17 (1) (*b*) and Second Schedule	Disabled Persons (District Advisory Committees and Panels) (Procedure) Regulations, 1945 (S.R. & O. 1945 No. 939), Regulation 5.

TABLE II

TRIBUNALS BEFORE WHICH LEGAL REPRESENTATION IS ALLOWED ONLY BY CONSENT OF SOME PERSON

Tribunal	Statute	Statutory Instrument	Person whose consent is required
1. Enquiries relating to Compulsory Purchase by Parish Councils	Local Government Act, 1933, Section 168 (5)	—	Minister of Housing and Local Government.
2. Police Appeals Enquiries	Police (Appeals) Act, 1927, Section 4 Police (Appeals) Act, 1943	Police (Appeals) Rules, 1943 (S.R. & O. 1943 No. 473), Rules 5 and 6, as amended by Police (Appeals) Rules, 1944 (S.R. & O. 1944 No. 913)	Person holding enquiry.
3. Tribunals of Enquiry into Disciplinary Offences by Prison Officers	PrisonAct,1898, as amended by the Prison Act, 1952, Section 54 (2) and (3), and the Fourth Schedule	Prison Rules, 1945 (S.R. & O. 1945 No. 148), Rule 4, as amended by Prison Rules, 1949 (S.I. 1949 No. 1073), Rule 4	The Tribunal.
4. The Regional Controller of the Ministry of Fuel and Power	—	Defence (General) Regulations, 1939, Regulations 55 and 55AA. Coal Distribution Order, 1943 (S.R. & O. 1943 No. 1138), Article 54 (4), as amended by Coal Distribution (Amendment) Order, 1952 (S.R. & O. 1952 No. 338), Article 3	The Tribunal.
5. The National Insurance (Industrial Injuries) Local Appeals Tribunals	National Insurance(Industrial Injuries) Act, 1946	National Insurance (Industrial Injuries) (Determination of Claims and Questions) Regulations, 1948 (S.I. 1948 No. 1299), Regulations 15 and 27	The Chairman of the Tribunal.
6. The Industrial Court	Industrial Courts Act, 1919, Section 9	Industrial Court (Procedure) Rules, 1920 (S.R. & O. 1924 No. 554/L.6), Rule 8	The Court.

[17th December.

HOUSE OF COMMONS

QUESTIONS

CHILDREN : CRIMINAL PROCEEDINGS (EXAMINATION)

The HOME SECRETARY stated that detailed instruction on the examination of children who might be involved in criminal proceedings was included in the thirteen weeks' course which all newly-appointed constables, men and women, received at the District Police Training Centres.

[18th December.

ATTENDANCE CENTRES

The HOME SECRETARY said that eight attendance centres had been provided under s. 48 (2) of the Criminal Justice Act, 1948. Four more would open next month, and a number of others were in various stages of preparation. [18th December.

GOVERNMENT INQUIRIES (WELSH LANGUAGE)

Asked whether he would ensure that all public inquiries held in Wales would be conducted by officers who had an adequate knowledge of the Welsh language, the HOME SECRETARY said he would look into the matter, but he foresaw difficulties in so doing where the subject-matter of the inquiry required expert technical qualifications on the part of the person conducting it. He and his colleagues fully appreciated the need for an interpreter to be present when it was known that evidence would be given in Welsh, and made the necessary arrangements.

[18th December.

AGRICULTURAL HOLDINGS ACT, 1948

Asked to consider making a regulation under the Agricultural Holdings Act, 1948, s. 26 (1) (*e*), to safeguard the interests of sub-tenant farmers by giving them at least the same security of tenure as tenant farmers, and by securing that where the interest of the tenant was terminated by notice to quit, the sub-tenant would hold from the landlord on terms no worse than those in which he held from the tenant, Sir THOMAS DUGDALE said he was keeping the position of sub-tenants under the Act under review, but at present saw no necessity for such a regulation.

[18th December.

STATUTORY INSTRUMENTS

Dumfries-Kilmarnock Trunk Road (Carronbridge Diversion) Order, 1952. (S.I. 1952 No. 2153.)

Fire Services (Conditions of Service) (Scotland) Amendment No. 2 Regulations, 1952. (S.I. 1952 No. 2170 (S. 110).)

Housing (Forms) (Scotland) Amendment Regulations, 1952. (S.I. 1952 No. 2178 (S. 113).) 5d.

Hydrocarbon Oil Duties (Drawback) (No. 3) Order, 1952. (S.I. 1952 No. 2174.)

London-Fishguard Trunk Road (Dowdeswell Diversion) Order, 1952. (S.I. 1952 No. 2154.)

London Traffic (Prescribed Routes) (No. 27) Regulations, 1952. (S.I. 1952 No. 2168.)

London Traffic (Prescribed Routes) (No. 28) Regulations, 1952. (S.I. 1952 No. 2183.)

London Traffic (Prohibition of Waiting) (Epping) Regulations, 1952. (S.I. 1952 No. 2169.)

Medical Act, 1950 (Persons Provisionally Registered) (National Service) Order of Council, 1952. (S.I. 1952 No. 2188.)

Metropolitan Police Staffs (Increase of Superannuation Allowances) Order, 1952. (S.I. 1952 No. 2181.)

Motor Vehicles (Authorisation of Special Types) General Order, 1952. (S.I. 1952 No. 2173.) 11d.

Motor Vehicles (International Circulation) (Amendment) Regulations, 1952. (S.I. 1952 No. 2152.)

Motor Vehicles (International Motor Insurance Card) Regulations, 1952. (S.I. 1952 No. 2151.) 8d.

National Insurance (Hospital In-Patients) Amendment Regulations, 1952. (S.I. 1952 No. 2179.) 6d.

Police Pensions Regulations, 1952. (S.I. 1952 No. 2162.) 8d.

Police Pensions (Scotland) Regulations, 1952. (S.I. 1952 No. 2177 (S. 112).) 8d.

Probation (Scotland) Amendment Rules, 1952. (S.I. 1952 No. 2176 (S. 111).)

Retail Bespoke Tailoring Wages Council (Scotland) Wages Regulation (Holidays) (Amendment) Order, 1952. (S.I. 1952 No. 2165.)

Retention of Cable under Highway (Surrey) (No. 1) Order, 1952. (S.I. 1952 No. 2155.)

Stopping up of Highways (Kent) (No. 5) Order, 1952. (S.I. 1952 No. 2156.)

Superannuation (Teaching and Public Boards) (Scotland) Rules, 1952. (S.I. 1952 No. 2149 (S. 109).) 8d.

Teachers Superannuation (Royal Air Force Education) Amending Scheme, 1952. (S.I. 1952 No. 2171.)

West Cheshire Water Board Order, 1952. (S.I. 1952 No. 2180.) 5d.
Wild Birds Protection (Surrey) Order, 1952. (S.I. 1952 No. 2172.)
Winchester Water Order, 1952. (S.I. 1952 No. 2148.)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102-103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d. post free.]

NOTES AND NEWS

Honours and Appointments

Mr. R. W. NEEDHAM, Q.C., has been elected Master Treasurer of the Middle Temple for 1953. Mr. M. L. BERRYMAN, Q.C., and Mr. D. S. CHETWOOD have been elected Masters of the Bench.

Miscellaneous

CENTRAL LAND BOARD

APPROVAL OF ASSIGNMENTS

The following notice (C.L.B./47) was issued by the Central Land Board on 17th December :—

1. Under s. 64 of the Town and Country Planning Act, 1947, and reg. 7 of the Claims for Depreciation of Land Values Regulations, 1948 (S.I. 1948 No. 902), assignments of the right to receive any payment in respect of claims for loss of development value are of no effect unless notified to the Board by 31st December, 1952.

2. The Town and Country Planning Bill, 1952, relates to assignments made on or after 18th November, 1952 (the date on which the Bill was introduced). With regard to assignments made before that date, para. 1 above applies. Clause 2 (2) of the Bill proposes that (except in the cases referred to in para. 3 below) such assignments shall be of no effect unless and until they have been approved in writing by the Board. Clause 2 (3) proposes that in granting or withholding their approval the Board shall ensure as far as possible that claims shall be in the hands of persons having an interest in the land to which they relate ; and that part of a claim shall be assigned only to a person having an interest in the appropriate part of the land.

3. Clause 2 (3) excepts, however, from the need to secure approval (subject to notice being given to the Board) any assignment which either " (*a*) only operates to transfer the beneficial interest in a claim made in respect of an interest in land to the person beneficially entitled to that interest in that land or to some interest in which that interest has merged ; or (*b*) does not operate to transfer any beneficial interest in the claim." In these cases notice in writing will have to be given to the Board within one month of its being made, or within one month of the passing of the Bill where that is later. It seems therefore that there would be no need to secure approval for assignments which would result in the claim and the relevant interest in the land being in the same beneficial ownership ; although approval would be necessary for the assignment of part of a claim even if the assignee has an interest in the appropriate part of the land.

4. The Board cannot of course either grant or withhold their approval of an assignment until the Bill is passed. In cases which appear to fall within para. 3 above, however, the Board will provisionally acknowledge any notice of assignment which is given to them in writing and if when the Bill is passed approval is not necessary, the Board will so inform the assignee. In all other cases the Board are prepared to receive applications for their written approval, but will be unable to deal with them until the Bill is passed, when they will be dealt with in order of receipt.

5. In the circumstances the Board, with the approval of The Law Society, advise those concerned in drawing up contracts involving assignments, where it is doubtful whether the transaction is of such a kind as would require the Board's approval, to make the contract provisional upon the Board's consent being obtained if it is required.

6. Any notice of assignment should contain such information as may enable the Board to identify the land and the interest therein to which the assignment relates. It is convenient that the date and reference number of the Board's determination of development value should be quoted.

Any application for the Board's approval should contain similar information together with particulars of the interest (if any) of the assignee in the land to which the claim relates, and the circumstances in which the Board's approval is sought.

BOARD OF TRADE COMMITTEE TO CONSIDER THE QUESTION OF NO PAR VALUE SHARES

The President of the Board of Trade has decided to set up a Committee with the following terms of reference : To consider whether it is desirable to amend the Companies Act, 1948, so as to permit the issue of shares of no par value; and, if so, to consider and report what amendments in the Act should be made for this purpose, having due regard to the need for safeguards for investors and for the public interest. Mr. Montagu L. Gedge, Q.C., will be Chairman of the Committee, and the other members will be Mr. John Adamson, C.A., Mr. H. C. Arnold-Forster, C.M.G., Mr. W. B. Beard, O.B.E., Sir Sam H. Brown (of Messrs. Linklaters and Paines), Viscount Harcourt, O.B.E., Mr. E. H. S. Marker, C.B., Mr. Arthur Whittaker, C.B.E. The Secretary of the Committee will be Mr. I. de Keyser, Insurance & Companies Department, Board of Trade, Lacon House, Theobalds Road, W.C.1.

The address of the Clerk to the National Health Service Tribunal has been changed to : R. B. Cooke, Esq., Solicitor, 1 South Square, Gray's Inn, London, W.C.2 (Telephone : CHAncery 8155).

DEVELOPMENT PLANS

DEVELOPMENT PLAN FOR THE CITY AND COUNTY BOROUGH OF SHEFFIELD

The above development plan was, on 15th December, 1952, submitted to the Minister of Housing and Local Government for approval. It relates to land situate within the City and County Borough of Sheffield, excluding only that part thereof which lies within the Peak District National Park. A certified copy of the plan as submitted for approval may be inspected at the Town Hall, Sheffield, 1, from 9 a.m. to 12 noon on Saturdays, and 10 a.m. to 5 p.m. on other weekdays, other than Bank Holidays. Any objection or representation with reference to the plan may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 11th February, 1953, and should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Sheffield City Council (by letter addressed to the Town Clerk at the Town Hall, Sheffield, 1) and will then be entitled to receive notice of the eventual approval of the plan.

COUNTY BOROUGH OF WEST HAM DEVELOPMENT PLAN

The above development plan was, on 15th December, 1952, submitted to the Minister of Housing and Local Government for approval. It relates to land situate within and comprising the area of the County Borough of West Ham. A certified copy of the plan as submitted for approval may be inspected at West Ham Town Hall, Stratford, E.15, on weekdays (including Saturdays) from 9.30 a.m. to 5.30 p.m. until 31st January, 1953. Any objection or representation with reference to the plan may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 2nd February, 1953, and should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the West Ham County Borough Council and will then be entitled to receive notice of the eventual approval of the plan.

THE SOLICITORS ACTS, 1932 TO 1941

On the 11th December, 1952, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that there be imposed upon BERTRAM LOVELL, of 8 Wrotham Road, Gravesend, in the county of Kent, a penalty of £250, to be forfeited to Her Majesty, and that he do pay to the complainant his costs of and incidental to the application and inquiry.

On the 11th December, 1952, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of EDWARD HICKLING DIXON, formerly of Nottingham and now of H.M. Prison, Lincoln, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

At The Law Society's Intermediate Examination, held on 6th and 7th November, 1952, thirteen candidates gave notice for the whole examination, of whom three passed both parts, two passed the law portion only and two passed the trust accounts and book-keeping portion only. Of 290 candidates who gave notice for the law portion only, 142 passed, of whom E. W. T. Dalkin, D. M. Davies and G. D. Ide were placed in the first class. Of 386 candidates for the trust accounts and book-keeping portion only, 197 passed.

OBITUARY

MR. E. FLETCHER

Mr. Edward Fletcher, retired solicitor, of Leeds, died on 19th December at his home at Ilkley, aged 89. He was admitted in 1886 and retired in 1948. He was a member of Ilkley Urban Council from 1899 to 1902, the last year as chairman. He served for several years on the West Riding County Council and for forty years was a governor of Ilkley Grammar School and a member of Ilkley Education Committee. He was Yorkshire's first lawn tennis singles champion in 1884.

MR. E. G. LEAROYD

Mr. Ernest Gordon Learoyd, solicitor, of Huddersfield, has died at his home in Leeds, at the age of 82. Admitted in 1895, he was, with the exception of Mr. H. W. Jackson, the oldest practising solicitor in Huddersfield. He was a founder member of the Huddersfield Automobile Club.

MR. C. B. MASEFIELD

Mr. Charles Briscoe Masefield, solicitor, of Ledbury, Herefordshire, has died at the age of 71. Younger brother of Mr. John Masefield, the Poet Laureate, he was admitted in 1904 and was Clerk to Ledbury Magistrates for thirty-six years.

MR. F. R. MORTIMER

Mr. Francis Richard Mortimer, solicitor, of Pinner, Middlesex, formerly of Wood Green, died on 17th November, aged 87. He was admitted in 1891 and was a Past Master of the Worshipful Company of Barbers.

MR. J. B. POMEROY

Mr. John Bartle Pomeroy, solicitor, of Wymondham, died on 11th December, aged 85. He was admitted in 1891.

MR. C. E. PUTTOCK

Mr. Charles Edward Puttock, chief cashier for fifty years of Messrs. Currey & Co., of Buckingham Gate, London, S.W.1, and a member of their staff from 1886 to 1949, died on 15th December, at Hove, aged 80.

MR. J. W. ROBERTS

Mr. John Wythen Roberts, solicitor, of Evesham, died on 6th December, aged 74. He was admitted in 1912 and had been clerk to the magistrates and county court registrar at Winchcombe.

MR. F. C. SHACKEL

Mr. Frederick Charles Shackel, retired solicitor, of Penarth, died on 30th November, aged 90. Admitted in 1887, he was President of Cardiff and District Law Society in 1923. Mr. and Mrs. Shackel (who survives him) celebrated their diamond wedding eighteen months ago.

MR. J. M. WILKINSON

Mr. John Musgrave Wilkinson, solicitor, of Tunbridge Wells, died on 7th December, aged 61. He was admitted in 1920 and had been solicitor to the Church Commissioners.

SOCIETIES

GRAY'S INN

On Thursday, 18th December, the Treasurer (Mr. Justice Sellers, M.C.) and the Masters of the Bench of Gray's Inn entertained to dinner in Hall the Treasurer (The Right Hon. Lord Justice Singleton) and Masters of the Bench of the Inner Temple in commemoration of the Ancient Amity and League existing between the two Societies.

The 125th annual general meeting of the INCORPORATED LAW SOCIETY OF LIVERPOOL was held at the Library on 15th December, 1952. The retiring President, Mr. L. E. Rutherford, LL.B., presided over a representative gathering and delivered an address. The thanks of the meeting were tendered to the President for his address by Mr. Roland Marshall, seconded by Mr. J. C. Bryson. The report and accounts for the past year were adopted and the following were elected members of the committee for the ensuing term of three years: Messrs. W. L. Bateson, J. S. Crook, R. V. F. Crooks, T. W. Harley, J. W. T. Holland, E. Holland Hughes, S. M. Farmer, H. R. Pruddah and E. N. Wood.

The Reading and district branch of the SOLICITORS' MANAGING CLERKS' ASSOCIATION held a dinner at Wellsteeds' Restaurant, Reading, to celebrate the branch's first year of existence. Members, solicitors and friends attended. Mr. H. W. Wyeth, chairman of the branch, presided, and Mr. J. W. W. Sachs (London), president of the Association, and Mr. H. C. Coles, secretary of the branch's committee, were amongst the company.

The LAW STUDENTS' DEBATING SOCIETY announce the following programme for January:

6th January: "That this House would rather have died in the seventeenth century than have lived in the twentieth."

13th January: A House of Lords Moot. The Hon. Mr. Justice Slade and The Hon. Mr. Justice Lloyd-Jacob have kindly consented to preside.

20th January: "That the British will to work has been killed by kindness."

27th January: "That the case of *Candler* v. *Crane, Christmas and Co.* [1951] 2 K.B. 164; 1 All E.R. 426, was wrongly decided."

The UNION SOCIETY OF LONDON (meetings in the Common Room, Gray's Inn, at 8 p.m.) announce the following subjects for debate in January, 1953:

Wednesday, 14th January (joint debate with the Oxford Union Society): "That the policy of the Western Powers is well designed to meet the challenge of Communism."

Wednesday, 21st January: "That this House faces the New Year with confidence."

Wednesday, 28th January: "That this House opposes the creation of non-judicial life peerages."

The UNITED LAW SOCIETY announce the following debates for January, to be held in Gray's Inn Common Room at 10 South Square, Gray's Inn, at 7.15 p.m. :—

12th January: "That this House approves the dissenting judgment of Lord Justice Jenkins in *Cooden Engineering Co., Ltd.* v. *Stanford* [1952] 2 All E.R. 915."

19th January: "That the destiny of man is to return to the apes."

26th January "That this House views with disapproval the recent Government policy in Kenya."

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